

**PURSUIING CIVIL CLAIMS FOR  
FOREIGN DOMESTIC WORKERS  
IN SINGAPORE AND  
FROM ABROAD  
A PRACTITIONER'S MANUAL**



**Justice Without Borders**

# **Pursuing Civil Claims for Foreign Domestic Workers in Singapore and from Abroad: A Practitioner's Manual**

*Third Edition*

**Authored and Edited by**

Douglas MACLEAN  
*Executive Director*

Shalini JAYARAJ  
*Head of Office, Singapore*

Aidan GOH  
Charmaine LIM  
Mathea LIM  
TANG Kai Qing  
TEO Yi Ting  
Tiffany HANDJAJA  
Natalee HO  
*Pro Bono Legal Fellows*

**With Additional Input and Support by**

Sri ARYANI  
*Head of Office, Indonesia*

Jennie EDLUND  
*Pro Bono Legal Officer, Singapore*

Eva Maria Putri SALSABILA  
*Legal Officer, Indonesia*

**Published by Justice Without Borders**

© October 2018

All rights reserved. No part of this book may be reproduced in any form or by electronic or mechanical means including information storage and retrieval systems without written permission from Justice Without Borders.

## **DISCLAIMER**

---

This Manual contains brief general information on the law, which is provided by volunteer lawyers with Justice Without Borders (JWB) and is accurate as of October 2018. The information is provided as a public service by JWB. While it is derived from sources believed to be reliable and accurate, JWB does not make any representation or warranty as to the accuracy of the information. JWB and its representatives also do not accept any responsibility for errors or omissions in the information provided. The information provided is not a definitive analysis of the subject, and professional legal advice should be taken before any course of action is pursued.

Views expressed by the contributors are not necessarily those of JWB. While every effort has been made to ensure that the information contained in this Manual is correct, the contributors, editorial team, and JWB disclaim all liability and responsibility for any error or omission in this publication, and in respect of anything, or the consequences of anything, done or omitted to be done by any person in reliance, whether wholly or partially, upon the whole or any part of the contents of this publication.

## ACKNOWLEDGEMENTS

---

This Manual would not have been possible without the invaluable assistance we received from our law firm partners, volunteer lawyers and frontline organisation partners. We are grateful for the review undertaken and the suggestions, comments and feedback provided to us by these individuals and organisations, and for their support of our work.

We would like to thank LOONG Tse Chuan, Mark LEE, Muslim ALBAKRI, NG Bin Hong, Sze Hao QUEK, Vineetha GUNASEKARAN and Wesley CHAN for taking the time out of their busy schedules to review various segments of this publication, particularly as relates to Singapore law.

We would also like to thank Amanda LEES and Robert GRANT of Simmons & Simmons for conducting the underlying research that enabled us to include a relatively expansive section on damages, and the subsequent review assistance rendered; and Jonathan MUK, Rachel CHIN, and Alcina CHEW of Tan Kok Quan Partnership for working with our Legal Fellows on research on illegal deployment, thereby allowing us to incorporate it as a section in this Manual, and their subsequent review of the same.

We also express our appreciation for the team at Herbert Smith Freehills and Prolegis LLC who provided us with additional support and input after the first draft of this updated publication had been reviewed.

We would also like to thank Foreign Domestic Worker Association for Social Support and Training (FAST) and Humanitarian Organisation for Migration Economics (HOME) for very helpfully and willingly sharing their knowledge and their first-hand experiences as migrant worker organisations that provide direct services on the frontline, and we look forward to continuing to support the very important work they undertake as partners.

Finally, we would like to thank the National University of Singapore (NUS) Faculty of Law and Singapore Management University (SMU) Faculty of Law without whom this Manual would not exist. They are amazing academic partners, and have produced an excellent number of students with fantastic research capabilities who we have had the privilege to work with. These students – JWB's Legal Fellows – have been the backbone of this updated publication and have been integral to the work being undertaken at JWB.

## PREFACE

---

Many Singaporean households employ Foreign Domestic Workers. Besides ongoing cleaning and maintenance work, their tasks can range from caring for the family's children and/or elderly in-home relatives. Unfortunately, when things go wrong, access to justice can be a difficult challenge for these often-mobile workers. At present, legal remedies are only locally available in practice, restricted to where the worker is present at the moment. On paper, their standing to pursue civil action continues post-return, but the reality remains different. For many, going home means going without.

This Manual seeks to address this practical gap in access to justice amongst the Foreign Domestic Workers in Singapore, one of the most popular destinations for such workers from across Asia. The guide introduces the Singapore-based legal options available to workers who return home, offering pro bono lawyers an introduction to the potential solutions they can help their clients seek. The materials cover a broad range of issues that victims of exploitation or human trafficking may suffer.

Ultimately, we intend this work to help these victims seek justice, even after returning home. We also hope additional civil cases will warn bad employers, employment agencies and brokers, who sadly exist in every country, that they can no longer use a worker's return home to flout Singapore law and avoid responsibility.

**A note to audiences:** this Manual was designed for Singapore and home country lawyers, direct service providers, other entities. For lawyers who are new to issues surrounding the employment of Foreign Domestic Workers in Singapore, this Manual provides an overview of common legal problems that foreign domestic workers face in the course of their work. For Singapore direct service providers, this Manual can serve as a screening tool, helping paralegals and other staff identify potential claims that the worker can make 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 have yet to be litigated in Singapore courts. The logistical hurdles involved in cross-border pro bono litigation are also not fully understood. As such, we invite all our partners and readers of this Manual to share your thoughts and feedback on how we can improve this document so that it reaches its maximum potential. Please feel free to e-mail us with your input.

Douglas MacLean  
Executive Director  
Justice Without Borders  
[info@forjusticewithoutborders.org](mailto:info@forjusticewithoutborders.org)

## INTRODUCTION TO THE THIRD EDITION

---

We are pleased to release the third edition of this product, newly retitled “Pursuing Civil Claims for Foreign Domestic Workers in Singapore and from Abroad: A Practitioner’s Manual”. The title change reflects the new edition’s shift in focus. While past editions addressed Migrant Worker issues in general, this new edition focuses specifically on Foreign Domestic Workers and the information relevant to them and those who aid them. To this end, a few notable additions to the Manual include:

1. *A new section on contractual breaches specific to Foreign Domestic Workers.* We have added a new section that addresses breaches of the employment contract that might be particularly relevant to Foreign Domestic Workers. This new section examines claims that might be brought for unfair dismissal, as well as claims of oppressive working conditions, where certain satisfactory working conditions are promised in the employment contract but not delivered.
2. *An expanded look at the torts that might be committed against Foreign Domestic Workers.* Besides examining intentional torts, such as battery, assault and false imprisonment, the new section also discusses the torts of defamation and malicious falsehood in relation to false reports that may be made against a Foreign Domestic Worker. In addition, the section covers the tort of negligence, particularly in respect of the non-delegable duty of care owed by employers to their Foreign Domestic Workers. Further, the new section explores possible claims in Harassment under the Protection from Harassment Act (“POHA”).
3. *New sections on Illegal Deployment and the Overcharging of Agency Fees.* The Manual includes new sections on issues that are most relevant to these workers. Illegal deployment of Foreign Domestic Workers by their employers is a perennial issue, and the discussion here centres around the possibility of claiming compensation for the work done when compelled to do so under these conditions. The Manual also focuses on how to recover excess agency fees charged to the worker in the absence of contractual privity between the employment agency and the Foreign Domestic Worker.
4. *A New Section on Evidence Collection and other practical considerations.* The strength of the evidence available is the foundation of any discussion on whether a legal claim can be made out. This new section discusses the various types of evidence that might be needed in making out the common claims that we anticipate can be brought on behalf of a Foreign Domestic Worker and how they might be collected. Here, we also examine the relatively new Personal Data Protection Act (“PDPA”) as a potential avenue to facilitate evidence collection.
5. *The addition of Appendices.* The Appendices contain brief case summaries of the relevant cases, sample contracts from different jurisdictions which aim to regulate the employer-Foreign Domestic Worker and employer-employment agency relationships, as well as a sample template for requests made under the Personal Data Protection Act. While it is hoped that these appendices will act as ready reference for practitioners and case workers alike, it should be noted that contracts will vary from case to case and care should be taken to identify and utilize such factual differences.

Finally, where relevant, the Manual also includes information on Migrant Workers more generally given the considerable overlap in the laws regulating both Migrant Workers and Foreign Domestic Workers. Where this is done, the term Foreign Domestic Worker (“FDW”) should be understood as referring to a subset of people within the larger group of Migrant Workers (“MWs”).

This work continues to benefit from feedback from the legal and non-profit communities that handle Migrant Worker and Foreign Domestic Worker claims every day. We are especially grateful to our volunteer lawyers, and our Summer and Fall Legal Fellows, for their sharp eyes and fine work on this Third Edition. We would also like to extend our gratitude to the organisations and individuals that helped us review the earlier drafts of the Manual for their invaluable feedback and suggestions. We also acknowledge with great thanks the work of the authors and editors of previous editions of the Manual, whose work greatly informed the new edition.

Reports of inaccuracies or ideas for future updates are very much welcomed, and can be sent to us at [info@forjusticewithoutborders.org](mailto:info@forjusticewithoutborders.org).

# Table of Contents

---

<b>INTERPRETATION .....</b>	<b>13</b>
<b>1. ABBREVIATIONS .....</b>	<b>13</b>
<b>2. COMMONLY USED CONCEPTS .....</b>	<b>14</b>
<b>CHAPTER ONE .....</b>	<b>17</b>
<b>INTRODUCTION .....</b>	<b>17</b>
<b>CHAPTER ONE: INTRODUCTION .....</b>	<b>18</b>
<b>1. OVERVIEW OF THE PRACTITIONER’S MANUAL .....</b>	<b>18</b>
<b>2. THE LANDSCAPE SURROUNDING MIGRANT WORKERS IN SINGAPORE .....</b>	<b>19</b>
I. FOREIGN LABOUR IN SINGAPORE .....	19
A. <i>Singaporeans’ attitudes towards Migrant Workers</i> .....	19
B. <i>Harsh realities for Foreign Domestic Workers in Singapore</i> .....	20
<b>3. RELEVANT LEGISLATION AND REGULATIONS .....</b>	<b>23</b>
I. THE WORK PASS SYSTEM .....	23
A. <i>The levy and security bond</i> .....	23
i. Levy .....	23
ii. Security bond .....	24
B. <i>Process of recruitment for Foreign Domestic Workers</i> .....	24
C. <i>Applicable statutes</i> .....	25
<b>4. OPTIONS AVAILABLE TO FOREIGN DOMESTIC WORKERS SEEKING REDRESS .....</b>	<b>27</b>
I. PRELIMINARY CONSIDERATIONS .....	27
A. <i>Remaining physically present in Singapore</i> .....	27
i. Special Pass .....	28
ii. Temporary Job Scheme .....	28
B. <i>Legal costs in bringing a civil claim</i> .....	29
i. Security for costs .....	29
ii. Fees payable to the Magistrates Court or District Court .....	29
iii. Fees payable to the Small Claims Tribunal .....	29
iv. Ineligibility of Migrant Workers for legal aid under the Legal Aid Bureau .....	29
II. NEGOTIATIONS WITH THE EMPLOYER .....	31
III. APPROACHING THE MINISTRY OF MANPOWER .....	31
IV. FILING A CLAIM IN THE SINGAPORE CIVIL COURTS .....	32
A. <i>Overview of the Singapore court system</i> .....	32
B. <i>Bringing a claim to the Magistrate’s Court or District Court</i> .....	34
i. Issuing a Writ of Summons or Originating Summons .....	34
ii. Contesting the claim – entering an appearance .....	35

iii.	Contesting the claim – filing a defence and/or counterclaim.....	35
iv.	Simplified civil process.....	36
C.	<i>Bringing a claim to the Small Claims Tribunal</i> .....	36
<b>5.</b>	<b>CONCLUSION</b> .....	<b>37</b>
	<b>CHAPTER TWO</b> .....	<b>38</b>
	<b>COMMON LEGAL PROBLEMS AND AVAILABLE REMEDIES</b> .....	<b>38</b>
	<b>CHAPTER 2: COMMON LEGAL PROBLEMS AND AVAILABLE REMEDIES</b> .....	<b>39</b>
<b>1.</b>	<b>INTRODUCTION</b> .....	<b>39</b>
<b>2.</b>	<b>OVERVIEW OF PROBLEMS FACED BY FOREIGN DOMESTIC WORKERS</b> .....	<b>40</b>
I.	SALARY DISPUTES.....	40
II.	OTHER BREACHES OF THE EMPLOYMENT CONTRACT.....	41
III.	TORTS COMMITTED AGAINST FOREIGN DOMESTIC WORKERS.....	42
IV.	ILLEGAL DEPLOYMENT.....	43
V.	OVERCHARGING OF AGENCY FEES.....	43
<b>3.</b>	<b>SALARY DISPUTES</b> .....	<b>44</b>
I.	OVERVIEW OF SALARY DISPUTES.....	44
A.	<i>Where a single agreement exists</i> .....	44
B.	<i>Where multiple agreements exist</i> .....	44
II.	REMEDIES AND RULES.....	45
A.	<i>Where a single agreement exists</i> .....	45
i.	Bringing an action for debt on the basis of a written contract.....	45
B.	<i>Where multiple agreements exist</i> .....	45
i.	Later agreement promises a higher salary.....	45
ii.	Later agreement promises a lower salary.....	47
C.	<i>Voiding or rescinding a contract</i> .....	49
i.	Duress.....	49
ii.	Undue Influence.....	51
iii.	Unconscionability.....	52
iv.	Misrepresentation.....	53
<b>4.</b>	<b>OTHER BREACHES OF THE EMPLOYMENT CONTRACT</b> .....	<b>57</b>
I.	WRONGFUL DISMISSAL.....	57
A.	<i>Damages for wrongful dismissal</i> .....	57
II.	OPPRESSIVE WORK CONDITIONS.....	58
A.	<i>Heads of claim</i> .....	58
i.	Breach of contract.....	58
ii.	Constructive dismissal.....	58
B.	<i>Remedies for oppressive work conditions</i> .....	58
i.	Damages.....	58

<b>5. TORTS COMMITTED AGAINST FOREIGN DOMESTIC WORKERS.....</b>	<b>59</b>
I. ACCIDENT CAUSING INJURY .....	59
A. <i>Tort of negligence</i> .....	59
i. Elements of a negligence claim .....	59
ii. Non-delegable duty .....	61
B. <i>Breach of statutory duty</i> .....	63
i. Responsibilities and Obligations of Employers of Foreign Domestic Workers under Employment of Foreign Manpower Act and Employment of Foreign Manpower Regulations .....	64
II. INTENTIONAL ACTS CAUSING INJURY.....	68
A. <i>Action for battery</i> .....	68
i. Elements .....	68
B. <i>Action for assault</i> .....	69
i. Elements .....	69
C. <i>Action for false imprisonment</i> .....	70
i. Elements .....	70
III. HARASSMENT .....	71
A. <i>Background to the Protection from Harassment Act</i> .....	71
B. <i>Intentionally causing harassment, alarm or distress</i> .....	71
i. Definition of terms constituting offence or civil wrong.....	71
ii. Defence of reasonable conduct .....	72
C. <i>Causing harassment, alarm or distress</i> .....	72
i. Definition of terms constituting offence or civil wrong.....	72
ii. Defence of reasonable conduct.....	73
D. <i>Unlawful stalking</i> .....	73
i. Making out a claim of unlawful stalking .....	73
ii. Conduct constituting stalking .....	73
iii. "Ought to have reasonably known" .....	73
iv. Defences .....	74
E. <i>Common situations giving rise to a cause of action</i> .....	74
IV. FALSE REPORTS AND COMPLAINTS MADE AGAINST FOREIGN DOMESTIC WORKERS.....	75
A. <i>Defamation</i> .....	76
i. Elements of a defamation.....	76
ii. Defences to the Tort of Defamation .....	77
iii. Specific damages for the tort of defamation .....	78
B. <i>Tort of malicious falsehood</i> .....	79
V. DAMAGES .....	80
A. <i>Civil compensation for tortious acts</i> .....	80
i. Compensatory damages .....	80
ii. Non-compensatory damages.....	84
iii. Approach in awarding damages .....	85
B. <i>Compensation for harassment</i> .....	88
i. Injury to feelings .....	88
C. <i>Criminal compensation</i> .....	89
i. General principles underpinning criminal compensation.....	89

ii.	Quantum of compensation .....	90
VI.	GUIDELINES FOR THE ASSESSMENT OF GENERAL DAMAGES IN PERSONAL INJURY CASES .....	92
A.	<i>Psychiatric injuries</i> .....	92
i.	General psychiatric injury .....	92
ii.	Post-traumatic stress disorder.....	94
iii.	Chronic Pain Syndrome.....	94
iv.	Reflex Sympathetic Dystrophy.....	95
v.	Somatoform Disorder .....	95
<b>6.</b>	<b>ILLEGAL DEPLOYMENT .....</b>	<b>96</b>
I.	INTRODUCTION .....	96
II.	CLAIMS THAT CAN BE BROUGHT FOR COMPENSATION FOR WORK DONE BY FOREIGN DOMESTIC WORKERS DURING THEIR ILLEGAL DEPLOYMENT .....	96
III.	REMEDIES .....	97
<b>7.</b>	<b>OVERCHARGING OF AGENCY FEES.....</b>	<b>98</b>
<b>8.</b>	<b>EVIDENCE .....</b>	<b>100</b>
I.	TYPES OF EVIDENCE.....	100
A.	<i>Key identifying information of the defendant</i> .....	100
B.	<i>Employment contract</i> .....	103
C.	<i>In-Principle Approval</i> .....	103
D.	<i>Entrance medical examination</i> .....	103
E.	<i>Agency fee agreements</i> .....	104
F.	<i>Medical reports and records</i> .....	104
G.	<i>Police reports</i> .....	104
H.	<i>Closed circuit television (CCTV) footage</i> .....	104
I.	<i>Records from administrative proceedings</i> .....	105
J.	<i>Bank or wire transfer statements</i> .....	105
II.	HOW TO COLLECT EVIDENCE PURSUANT TO THE PERSONAL DATA PROTECTION ACT.....	105
A.	<i>Relevance of the Personal Data Protection Act</i> .....	105
B.	<i>Requesting access to documents pursuant to the Personal Data Protection Act</i> .....	106
C.	<i>Approaching the Personal Data Protection Commission</i> .....	106
III.	PRACTICAL CONSIDERATIONS .....	107
A.	<i>Evidence from abroad</i> .....	107
B.	<i>Sufficiency of evidence</i> .....	108
	<b>CHAPTER THREE .....</b>	<b>109</b>
	<b>PRACTICAL CONSIDERATIONS FOR CROSS BORDER CLAIMS.....</b>	<b>109</b>
	<b>CHAPTER 3: PRACTICAL CONSIDERATIONS FOR CROSS BORDER CLAIMS .....</b>	<b>110</b>
<b>1.</b>	<b>REMOTE REPRESENTATION.....</b>	<b>110</b>
I.	FOR FOREIGN DOMESTIC WORKERS WHO HAVE NOT LEFT SINGAPORE.....	110
A.	<i>Obtain relevant information in the client's destination</i> .....	110

B.	<i>Explain and provide a written copy of the expected next steps and overall course of the litigation</i>	110
C.	<i>Complete procedures that require the Foreign Domestic Worker's presence</i>	111
II.	FOR FOREIGN DOMESTIC WORKERS WHO HAVE LEFT SINGAPORE	111
A.	<i>Video conferencing</i>	111
i.	<i>Video conferencing fees</i>	111
ii.	<i>Conditions to allowing video conferencing</i>	112
B.	<i>Affidavit</i>	114
<b>2.</b>	<b>DEALING WITH CLIENTS</b>	<b>115</b>
I.	LANGUAGE BARRIERS	115
A.	<i>Explaining legal terms</i>	115
II.	DIFFERENCES IN THE LEGAL SYSTEM	115
III.	TIMEFRAMES	115
IV.	TELECOMMUNICATION	116
V.	OTHER CULTURAL DIFFERENCES OR IMPEDIMENTS	116
<b>3.</b>	<b>HELP FROM HOME COUNTRY PARTNERS</b>	<b>117</b>
I.	HOW A HOME COUNTRY PARTNER CAN HELP	117
II.	FINDING A HOME COUNTRY PARTNER	117
A.	<i>Lawyers and national bar associations</i>	117
B.	<i>Law Faculties and Legal Clinics</i>	118
C.	<i>Community-based and non-governmental organisations</i>	118
D.	<i>Relevant religious institutions</i>	119
E.	<i>Home country offices of international organisations</i>	120
i.	<i>The ILO</i>	120
ii.	<i>The IOM</i>	120
iii.	<i>The UN</i>	120
F.	<i>International law firms with presence in Singapore and the Foreign Domestic Worker's home country</i>	121
III.	GUIDELINES TO ESTABLISHING A PARTNERSHIP WITH A HOME COUNTRY PARTNER	121
A.	<i>Vetting potential partners</i>	121
B.	<i>What is the home country partner's reputation?</i>	121
C.	<i>Does the home country partner have sufficient language ability?</i>	121
D.	<i>Is there sufficient capacity to assist the practitioner?</i>	122
E.	<i>Entering a formal relationship with a home country partner</i>	122
F.	<i>Maintaining contact with the Foreign Domestic Worker</i>	122
G.	<i>Collecting evidence and taking depositions</i>	122
H.	<i>Explaining critical differences in evidence collection methods</i>	123
	<b>APPENDIX 1: RELEVANT STATUTORY PROVISIONS</b>	<b>124</b>
	<b>APPENDIX 2: CASES</b>	<b>127</b>
	<b>APPENDIX 3: CASE SUMMARIES</b>	<b>133</b>

<b>APPENDIX 4: SAMPLE CONTRACTS – EMPLOYMENT AGREEMENT BETWEEN EMPLOYER AND FOREIGN DOMESTIC WORKER (SINGAPORE) .....</b>	<b>146</b>
<b>APPENDIX 5: SAMPLE CONTRACTS – EMPLOYMENT AGREEMENT BETWEEN EMPLOYER AND FOREIGN DOMESTIC WORKER IN ENGLISH (INDONESIA) .....</b>	<b>154</b>
<b>APPENDIX 6: SAMPLE CONTRACTS – EMPLOYMENT AGREEMENT BETWEEN EMPLOYER AND FOREIGN DOMESTIC WORKER IN BAHASA INDONESIA (INDONESIA) .....</b>	<b>159</b>
<b>APPENDIX 7: SAMPLE CONTRACTS – EMPLOYMENT AGREEMENT BETWEEN EMPLOYER AND FOREIGN DOMESTIC WORKER (PHILIPPINES).....</b>	<b>164</b>
<b>APPENDIX 8: SAMPLE CONTRACTS – SERVICE AGREEMENT BETWEEN EMPLOYMENT AGENCY AND EMPLOYER (SINGAPORE) .....</b>	<b>169</b>
<b>APPENDIX 9: SAMPLE CONTRACTS – SAFETY AGREEMENT BETWEEN EMPLOYER AND FOREIGN DOMESTIC WORKER (SINGAPORE).....</b>	<b>181</b>
<b>APPENDIX 10: SAMPLE TEMPLATE FOR PDPA REQUEST.....</b>	<b>185</b>
<b>APPENDIX 11: CHECKLIST FOR EVIDENCE COLLECTION.....</b>	<b>187</b>

## INTERPRETATION

The following abbreviations and commonly used concepts are used throughout the Manual.

### 1. ABBREVIATIONS

CMC	Case Management Conference
EA	Employment Act
EAA	Employment Agencies Act
EFMA	Employment of Foreign Manpower Act
FDWs	Foreign Domestic Workers
HOME	Humanitarian Organization for Migration Economics
ILO	International Labour Organization
IOM	International Organization for Migration
IPA	In-Principle Approval
LOE	Letter of Engagement
MOM	Ministry of Manpower
MWs	Migrant Workers
PDPA	Personal Data Protection Act
PDPC	Personal Data Protection Commission
SCT	Small Claims Tribunal
TJS	Temporary Job Scheme
TWC2	Transient Workers Count Too
UN	United Nations
UNDP	United Nations Development Programme
WICA	Work Injury Compensation Act
WSHA	Workplace Health and Safety Act
WSS	Writ of Seizure and Sale

## 2. COMMONLY USED CONCEPTS

Affidavit	A written statement made under oath that is used as evidence in court.
Assault	An assault is any act committed intentionally or recklessly, which leads another person to fear immediate personal violence. <sup>1</sup>
Battery	The direct or indirect application of unlawful force by one person upon another. <sup>2</sup>
Breach of contract	The failure to fulfil a contractual obligation, which entitles the innocent party to a remedy. The obligation or term may be agreed in writing, orally, or by conduct, and may be expressly agreed by the parties or implied at common law, by statute, or statutory instrument. <sup>3</sup>
Claim	The assertion of a right. An action in civil courts is referred to as a claim. <sup>4</sup>
Claimant	The party bringing an action at law or claim, formally known as the plaintiff. <sup>5</sup>
Contract	An agreement enforceable at law. An essential feature of contract is a promise by one party to another to do or forbear from doing certain specified acts. <sup>6</sup>
Cause of action	The fact or combination of facts giving rise to a right of action. <sup>7</sup>
Damages	Compensation or indemnity for a loss suffered by a person following a tort, breach of contract, or breach of some statutory duty. <sup>8</sup>
Defamation	The tort consisting in the publication of a statement, which tends to lower the claimant in the estimation of right thinking people generally or which tends to make such people shun or avoid him. It may constitute libel or slander. <sup>9</sup>
Duress	Unlawful pressure to perform an act. It may render the act void or voidable. <sup>10</sup>
False imprisonment	The confinement of a person without just cause or excuse. There must be a total restraint of the person. An intention to frighten a person so they cannot move or escape may constitute false imprisonment. <sup>11</sup>
Garnishee	A person who has been warned not to pay a debt to anyone other than the third party who has obtained judgment against the debtor's own creditor. <sup>12</sup>
Harassment	Determined conduct directed at persons and is calculated to product discomfort, unease, and/or distress.

---

<sup>1</sup> Mick Woodley, *Osborn's Concise Law Dictionary* (Sweet & Maxwell, 12th Ed, 2013) ("*Osborn's Law Dictionary*").

<sup>2</sup> *Osborn's Law Dictionary*.

<sup>3</sup> *Osborn's Law Dictionary*.

<sup>4</sup> *Osborn's Law Dictionary*.

<sup>5</sup> *Osborn's Law Dictionary*.

<sup>6</sup> *Osborn's Law Dictionary*.

<sup>7</sup> *Osborn's Law Dictionary*.

<sup>8</sup> *Osborn's Law Dictionary*.

<sup>9</sup> *Osborn's Law Dictionary*.

<sup>10</sup> *Osborn's Law Dictionary*.

<sup>11</sup> *Osborn's Law Dictionary*.

<sup>12</sup> *Osborn's Law Dictionary*.

Negligence	As a tort, negligence is the breach by the defendant of a legal duty to care, which results in damage to the claimant. <sup>13</sup>
Quantum Meruit	<p>“As much as he has earned.”</p> <p>This is a remedy in quasi-contract, which is available:</p> <ul style="list-style-type: none"> <li>(i) Where one person has expressly or impliedly requested another to carry out a service without specifying remuneration, but where it is implied that a payment will be made of as much as the service is worth.</li> <li>(ii) If a person is committed by contract to carry out a piece of work for a lump sum, and he only carries out part of the work different from the contract, he cannot claim under the contract, but may be able to claim on a <i>quantum meruit</i> (e.g. if he was unjustifiably prevented by the other party from completing the contract).</li> <li>(iii) When work was done and accepted under a void contract, which was believed to be valid.<sup>14</sup></li> </ul>
Remedy	The means whereby breach of right is prevented, or redress is given. <sup>15</sup>
Rescission	An abrogation or revocation. Most typically, the termination of a contract, either by act of the parties or the court, whether for breach of contract, mistake, or misrepresentation. It is only possible if restitution is feasible. In equity, it means restoring the parties to the position they would have been in had there been no contract. At law, the effect is merely to relieve the parties of any further obligation to perform the contract. <sup>16</sup>
Restitution	<p>(1) The rules concerned with reversing a defendant’s unjust enrichment at the claimant’s expense, specifically recognized as a separate area of law by the House of Lords in <i>Lipkin Gorman (a firm) v Karpnale Ltd</i> [1991] 2 AC 548.</p> <p>(2) In relation to contract where there is no performance by one party, a performing party may gain restitution for the benefit he has provided.<sup>17</sup></p>
Statute	An Act of Parliament. <sup>18</sup>
Statutory duty	A duty, or liability, imposed by some Statute. <sup>19</sup>
Tort	A tort is a civil wrong, the victim of which, is entitled to some form of redress, e.g. damages for harm suffered or an injunction to prevent harm occurring or the infringement of a legal right. <sup>20</sup>
Tortfeasor	One who commits a tort. <sup>21</sup>

---

<sup>13</sup> *Osborn’s Law Dictionary*.

<sup>14</sup> *Osborn’s Law Dictionary*.

<sup>15</sup> *Osborn’s Law Dictionary*.

<sup>16</sup> *Osborn’s Law Dictionary*.

<sup>17</sup> *Osborn’s Law Dictionary*.

<sup>18</sup> *Osborn’s Law Dictionary*.

<sup>19</sup> *Osborn’s Law Dictionary*.

<sup>20</sup> *Osborn’s Law Dictionary*.

<sup>21</sup> *Osborn’s Law Dictionary*.

Unjust enrichment	A term associated with the law on restitution, which is most fully developed as the law of quasi-contract. <sup>22</sup>
Void	Of no legal effect; a nullity. A contract may be void on the face of it, or evidence may be required to show that it is void. <sup>23</sup>
Voidable	Capable of being set aside. An agreement or other act, which one of the parties to it is entitled to rescind, and which until it happens, has full legal effect. <sup>24</sup>
Wages	Money payable by an employer to an employee in respect of services at set intervals, for example, weekly or monthly. <sup>25</sup>
Writ of Summons / Writ	A document to commence legal proceedings in civil court.

---

<sup>22</sup> *Osborn's Law Dictionary.*

<sup>23</sup> *Osborn's Law Dictionary.*

<sup>24</sup> *Osborn's Law Dictionary.*

<sup>25</sup> *Osborn's Law Dictionary.*

**CHAPTER ONE**  
**INTRODUCTION**

## CHAPTER ONE: INTRODUCTION

### 1. OVERVIEW OF THE PRACTITIONER'S MANUAL

- 1.1 This Practitioner's Manual ("Manual") aims to provide lawyers and caseworkers with a greater understanding of key issues that relate to Migrant Workers ("MWs") in Singapore, with a specific focus on the rights of Foreign Domestic Workers ("FDWs") and the types of civil claims that can be brought on their behalf in enforcing these rights.
- 1.2 By describing the social and legal landscape surrounding their employment in Singapore, this Manual seeks to provoke those assisting FDWs into an engagement with the movement of overcoming barriers and obtaining just compensation for these workers. In particular, this Manual seeks to give a clear and accessible overview of the legal claims that may be pursued against errant employers and agencies and a framework that can be utilized by practitioners as a springboard when conceptualizing effective strategies for their FDW client.
- 1.3 This Manual will use the term "Foreign Domestic Workers" to refer to individuals more commonly referred to as "helpers" or "maids" in Singapore. This is done to recognise the fact that these women are workers who have migrated for employment first and foremost, and only secondarily, have chosen to work in a domestic household. Consequently, these workers should be accorded the same rights and protections afforded to non-domestic workers before the law, following the principle of equality enshrined in the Universal Declaration of Human Rights.<sup>26</sup> Henceforth, the term "Migrant Workers" will be used to refer to semi-skilled or unskilled foreign workers who are in Singapore on short-term work permits. This term encompasses FDWs as well as other types of low wage workers, such as construction workers.
- 1.4 Chapter One of this Manual will lay out rules and regulations in Singapore relating to the employment and rights of MWs, as well as the legal redress available to them.
- 1.5 Chapter Two will discuss the common legal problems faced by FDWs and the evidence collection procedure to be employed when pursuing remedies for these problems. An overview of common problems, potential causes of action and associated remedies is laid out in the chart titled "Overview of problems faced by FDWs".<sup>27</sup>
- 1.6 Finally, this Manual will conclude by addressing the practical considerations that must be borne in mind when pursuing cross-border claims, namely, matters relating to court processes, client sensitivity, partnership with home-country and host-country organisations and the myriad of issues that are often faced by FDWs when they return home.
- 1.7 This chapter lays the foundational groundwork of the Manual. Section 2 provides an overview of Singapore's relationship with MWs and FDWs and Section 3 then explores the general framework of the Singapore court system and the procedures for seeking legal help in Singapore. Section 4 highlights the relevant pieces of legislation applicable to MWs and

---

<sup>26</sup> In the Universal Periodic Review (UPR) report released by the Singapore Government in October 2015, the Singapore Government explained its approach and progress on human rights and stated the following: "We therefore firmly apply the rule of law to ensure stability, equality and social justice, which are the necessary conditions for respecting the fundamental human rights enshrined in our Constitution and the Universal Declaration of Human Rights." See United Nations, Human Rights Council, *Singapore Periodic Review Report* (2015) at para 4.

<sup>27</sup> See Chart titled "Overview of problems faced by FDWs" in Chapter 2.

FDWs and finally, the chapter closes with a discussion of matters that relate specifically to FDWs in Singapore.

## 2. THE LANDSCAPE SURROUNDING MIGRANT WORKERS IN SINGAPORE

### I. Foreign labour in Singapore

- 2.1 When Singapore first gained independence in 1965, its economic prospects were bleak. Few expected it to become as prosperous as it is today given its small geographical size, lack of natural resources and relative scarcity of manpower. In light of these constraints, the Singapore government relaxed its immigration policies with the aim of expanding the economy. The resulting contributions of foreign workers in Singapore cannot be discounted. In the 1990s, foreign labour contributed 3.2% out of the annual GDP growth rate of 7.8%.<sup>28</sup>
- 2.2 While acknowledging that the foreign labour workforce in Singapore consists of workers from various parts of the world doing meaningful work in Singapore, the focus of this Manual is on foreign workers that take up low-skilled jobs, as opposed to what Singaporeans refer to as expatriate foreign workers (commonly referred to as “expats”) who generally take on higher-skilled work. The types of jobs that generally fall within the category of low-skilled foreign labour, include construction and domestic work.
- 2.3 The Singapore government has since expressly acknowledged the important role of foreign workers, stating that “if we want fewer foreign workers, we must be prepared for slower growth, higher costs, lower service level, and delays in the completion of our flats, roads and rail lines”.<sup>29</sup> The importance of foreign labour includes the work of FDWs – as of 2017, one in five resident households in Singapore employs an FDW,<sup>30</sup> which has allowed many Singaporean women to seek employment outside the home.<sup>31</sup>
- 2.4 As a result, in just a few decades, Singapore has reinvented itself to become a developed country that is amongst the wealthiest in the world. Although this rapid economic growth is undeniably attributed to a range of other factors such as Singapore’s market efficiency, exceptional infrastructure and robust financial sector,<sup>32</sup> the contribution of low-wage foreign manpower should not be discounted.<sup>33</sup>

#### A. Singaporeans’ attitudes towards Migrant Workers

- 2.5 With its historical significance of immigration in populating the country, Singapore has been known to be a “migrant society”.<sup>34</sup> However, despite the crucial role that foreign workers

---

<sup>28</sup> Theresa W Devasahayam, “Placement and/or protection? Singapore’s labour policies and practices for temporary women migrant workers” *Journal of the Asia Pac Economy* 2010; 15(1): 45-58 at 47.

<sup>29</sup> *Singapore Parliamentary Debates, Official Report* (20 October 2008) vol 85 at cols 356 (Mah Bow Tan, Minister for National Development).

<sup>30</sup> Kok Xing Hui, “Draw Up List of Chores That Maids Shouldn’t Have to Do” *The Straits Times* (30 March 2017).

<sup>31</sup> Youyenn Teo, “Gender Disarmed: How Gendered Policies Produce Gender-Neutral Politics in Singapore” *Signs* 2009; 34(3): 533-558 at 544.

<sup>32</sup> World Economic Forum, *The Global Competitiveness Report 2017-2018* at p 26.

<sup>33</sup> Eugene KB Tan, “Managing Female Foreign Domestic Workers in Singapore: Economic Pragmatism, Coercive Legal Regulation, or Human Rights?” (2010) 43 *Israel Law Review* 99 at 104-105.

<sup>34</sup> *Immigration in Singapore* (Norman Vasu, Yeap Su Yin & Chan Wen Ling ed) (Amsterdam University Press, 2014) (“Immigration in Singapore”) at p 38.

play in growing the economy, anti-foreigner perceptions are not uncommon and have been expressed on social media platforms as well as mainstream media.<sup>35</sup>

- 2.6 These sentiments may be attributed to the sheer visibility of a substantial number of foreign nationals in an already densely populated country, which encourages the notion that Singaporeans are being displaced from access to amenities and other living spaces.<sup>36</sup> In addition to the cultural differences that would inevitably exist between the various ethnic groups in Singapore, social tensions may arise and hinder the proper integration of foreign workers into the society.
- 2.7 Employers who adopt such an unwelcoming stance towards foreign workers may be emboldened to disregard their employee's rights. Foreign workers are more likely to be dehumanized and abused when perceived as "outsiders" and when their employers choose to focus on the differences rather than the similarities that prevail between them.<sup>37</sup>
- 2.8 In summary, the hostile attitudes towards MWs in Singapore have had great societal repercussions and it is against this backdrop that the various issues surrounding FDWs will be examined further in the following chapters.

## **B. Harsh realities for Foreign Domestic Workers in Singapore**

- 2.9 FDWs are commonly enticed to work abroad by promises of good job prospects and relatively high wages.<sup>38</sup> Many decide to come to Singapore despite the large recruitment fees charged by agencies (often illegally, unbeknownst to them) under the impression that the ability to earn more money even while paying off a heavy debt is an attractive proposition.<sup>39</sup>
- 2.10 However, reality can sometimes be vastly different from what was promised due to various factors. Firstly, the minimum salary level for Indonesian and Philippines FDWs in Singapore set by their respective embassies are not enforceable in Singapore as only Singapore laws apply in Singapore, and the resulting lack of wage regulations for FDWs may lead to lower amounts for these workers. Malicious employers or agencies may take advantage of an FDW's lack of proficiency in English and her lack of knowledge about local regulations and current market practices to impose an unfavourable salary level during the bargaining process.
- 2.11 FDWs may also be exploited by employment agencies and fall victim to illegal overcharging of agency fees. While the Employment Agencies Act forbids agencies from charging more than two months' salary of a foreign employee as agency fees (for a standard two-year contract),<sup>40</sup> in reality, the practice of charging excessive fees is rampant. Employment agencies in Singapore require the FDW's employer to make an upfront payment for these fees, that often range between S\$1,000 to S\$3,000 above the legally permissible limit,

---

<sup>35</sup> *Immigration in Singapore* at p 38.

<sup>36</sup> Speech by Mr Tan Chuan-Jin, Minister of State for Manpower and National Development at the STF Conference on Fair Employment Practices 2012, "Strengthening Fair and Responsible Employment - For Inclusive Growth in Challenging Times" at para 28 (18 April 2012) <<http://www.mom.gov.sg/newsroom/speeches/2012/speech-by-mr-tan-chuanjin-minister-of-state-for-manpower-and-national-development-at-the-stf-conference-on-fair-employment-practices-2012-18-april-2012-9am-compass-west-ballroom-resorts-world-sentosa-si>> (Accessed 12 July 2018).

<sup>37</sup> Yeoh BS, Huang S & Devasahayam TW, "Diasporic subjects in the nation: Foreign domestic workers, the reach of law and civil society in Singapore" *Asian Studies Review* 2004; 28(1): 7-23 at 19.

<sup>38</sup> *Immigration in Singapore* at p 132.

<sup>39</sup> Anju Mary Paul, "Commentary: Maids' overtime pay is long overdue" *Channel NewsAsia* (9 April 2018) <<https://www.channelnewsasia.com/news/commentary/maids-foreign-domestic-worker-deserve-overtime-rest-days-10104036>> (accessed 23 July 2018).

<sup>40</sup> Employment Agencies Rules 2011 (GN No. S 172/2011) ("Employment Agencies Rules"), r 12(1).

which the employers then get back from their FDWs through monthly salary deductions. Cases have been reported where the fees charged in excess of the legal limit were so substantial that it resulted in the FDW earning no income for months.<sup>41</sup>

- 2.12 It has also been reported that six out of ten FDWs in Singapore face issues such as bad living conditions, excessive working hours, deduction of salary and violence.<sup>42</sup> This exemplifies the vulnerability of these workers to exploitation by their employers or agencies.
- 2.13 Alone in an unfamiliar country, victims of such mistreatment often do not know where they can turn to for help or are in any case deterred by the possibility of losing their work permit in doing so.<sup>43</sup> FDWs are not allowed to switch employers without obtaining their current employer's consent and often, therefore, without the threat of repatriation. In order to obtain a transfer of employer, an issuance declaration needs to be signed by the current employer, which functions as a release form.<sup>44</sup> An FDW is susceptible to enduring ill treatment by her employer under such circumstances.
- 2.14 Moreover, FDWs are vulnerable to unjust dismissals as employers are able to unilaterally terminate their foreign employee's employment or cancel their work permits.<sup>45</sup> While this may be done by employers in all employment contexts, the FDW is hit especially hard in such a scenario, as the worker may be repatriated while still in debt and would be worse off financially than before his or her migration to Singapore.<sup>46</sup>
- 2.15 With the growing awareness of these challenges faced by our foreign workers, there are organisations in Singapore committed to providing assistance to MWs and FDWs facing employment violations or abuse. In addition, the work of practitioners and advocates who offer their time and expertise in this area goes a long way in helping to vindicate the rights of FDWs, who would otherwise not be able to afford legal representation.
- 2.16 The following table provides a non-exhaustive list of such organisations.

---

<sup>41</sup> HOME, *Home Sweet Home? Work, life and well-being of foreign domestic workers in Singapore* (March 2015) ("Home Sweet Home").

<sup>42</sup> "6 out of 10 maids in Singapore are exploited" Channel NewsAsia (30 November 2017) <<https://www.channelnewsasia.com/news/asia/6-out-of-10-maids-in-singapore-are-exploited-survey-9454694>> (accessed 19 July 2018).

<sup>43</sup> HOME & TWC2, "Justice Delayed, Justice Denied: The Experiences of Migrant Workers in Singapore" (2010) <<http://twc2.org.sg/2010/12/15/justice-delayed-justice-denied/>> (accessed 23 July 2018) ("Justice Delayed").

<sup>44</sup> Ministry of Manpower ("MOM") website, "Transfer an FDW to a new employer" <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/transfer-to-a-new-employer>> (accessed 20 July 2018).

<sup>45</sup> HOME & TWC2, *Convention on the Elimination of All Forms of Discrimination Against Women Shadow Report for Singapore* (October 2017) at p 3.

<sup>46</sup> *Justice Delayed*.

**Table 1: Foreign Domestic Worker Service Organisations in Singapore**

No	Name of Organisation	What they do	Contact Details
1	Justice Without Borders (JWB)	Facilitates civil compensation claims in Singapore for workers who have returned home	info@forjusticewithoutborders.org
2	Foreign Domestic Worker Association for Social Support and Training (FAST)	Provides social support and skills training for FDWs, as well as assistance in resolving claims in Singapore	+65 6509 1535 contact@fast.org.sg
3	Indonesia Family Network (IFN)	Provides counselling services and courses to FDWs	ifn_singapore@yahoo.com.sg
4	Filipino Family Network (FFN)	Provides enrichment programs and training workshops to FDWs	ffn.singapore@yahoo.com
5	Humanitarian Organization for Migration Economics (HOME)	Organises programs and workshops for FDWs. Runs a help desk and shelter for FDWs.	1800-7-977-977 +65 6341 5525 (for domestic workers) +65 6341 5535 (for other migrant workers) +65 6337 0282 (For Myanmar workers) +65 6547 4508 (For Indonesian workers)  helpdesk01@home.org.sg

### 3. RELEVANT LEGISLATION AND REGULATIONS

#### I. The work pass system

- 3.1 The work pass system regulates the employment of foreign employees in Singapore. The government of Singapore has constructed a system under which different types of employment passes are issued to foreign nationals according to their qualifications and monthly salaries.
- 3.2 There are three types of work passes:
- 1) Employment pass: applicable to foreign nationals with professional qualifications, and who earn a fixed monthly salary of at least S\$3,600;
  - 2) S pass: applicable to mid-level skilled workers who earn a fixed monthly salary of at least S\$2,200; and
  - 3) Work permit: applicable to low-skilled or semi-skilled workers (those primarily engaged in manual labour and domestic work).<sup>47</sup>
- 3.3 There is a distinction between the skilled “foreign talent” and the less skilled MWs – employment pass and S pass holders are eligible to apply for Singaporean permanent residency while those under work permits may not do so.<sup>48</sup> Further, while the employment pass and S pass may be renewed for a duration of up to three years, a renewed work permit is only valid for up to two years.<sup>49</sup>
- 3.4 In Singapore, employers may cancel a worker’s Work Permit and repatriate him at any time unless the worker has made or intends to make a salary or injury claim. Discretion over the validity of such claims rests with MOM.

#### A. The levy and security bond

##### i. Levy

- 3.5 To regulate the number of foreign workers in Singapore, a monthly levy is imposed on employers for each MW employed.<sup>50</sup> Recently, the FDW levy framework has been adjusted to account for the rising demand of FDWs from households with and without caregiving needs. To ensure a sustainable supply, the non-concessionary levy for the first FDW employed will be raised from S\$265 to S\$300 per month, effective from 1 April 2019.<sup>51</sup>

---

<sup>47</sup> MOM website, “Work passes and permits” <<http://www.mom.gov.sg/passes-and-permits>> (accessed 14 July 2018).

<sup>48</sup> ICA website, “Application for Singapore Permanent Residence (PR)” <<https://erep.ica.gov.sg/epr/index.xhtml>> (accessed 12 September 2018).

<sup>49</sup> MOM website, “Renew an Employment Pass” <<https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/renew-a-work-permit>> (accessed 12 September 2018). See also MOM website, “Renew an Employment Pass” <<https://www.mom.gov.sg/passes-and-permits/employment-pass/renew-a-pass>> (accessed 12 September 2018); MOM website “Renew an S Pass” <<https://www.mom.gov.sg/passes-and-permits/s-pass/renew-a-pass>> (accessed 12 September 2018).

<sup>50</sup> MOM website, “What is the foreign worker levy” <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/foreign-worker-levy/what-is-the-foreign-worker-levy>> (accessed 13 July 2018).

<sup>51</sup> MOM website, “Frequently Asked Questions (FAQs) on Changes to Foreign Domestic Worker (FDW) Levy Framework effective 1 April 2019” <<http://www.mom.gov.sg/~media/mom/documents/budget2018/faqs-on-fdw-levy-framework-changes.pdf?la=en>> (accessed 19 July 2018).

- 3.6 It has been argued that the high levy amount incentivizes employers to pass the financial burden onto workers in the form of exploitative cost-cutting practices.<sup>52</sup>

## ii. Security bond

- 3.7 An employer of a non-Malaysian work permit holder is obligated to pay a S\$5,000 security bond prior to the worker's arrival in Singapore.<sup>53</sup> The imposition of the bond is aimed at ensuring that both the employer and employee comply with the conditions of the work permit. Any violation of the work permit conditions may result in the forfeiture of the bond, which can create a system of private policing in which the employer feels compelled to excessively limit their employee's freedom and privacy. Some employers resort to measures such as confiscating the worker's passport and identification documents.<sup>54</sup> This practice is widespread but employers rarely get penalized for it. Particularly in the context of FDWs, such policing can be especially egregious as employers may even refuse to allow the FDW to take their weekly day off<sup>55</sup> or to leave the home unaccompanied.<sup>56</sup> There have also been accounts of employers installing CCTV cameras around the house to monitor their FDW's movements.<sup>57</sup>

## B. Process of recruitment for Foreign Domestic Workers

- 3.8 Employers may hire FDWs directly, through what is known as "direct hire", or through an employment agency. Prior to the FDW's arrival in Singapore, a work permit application has to be submitted to the Ministry of Manpower ("MOM"). An FDW is eligible for the work permit if she meets the following requirements:
- 1) Between 23 to 50 years of age at the time of application;<sup>58</sup>
  - 2) Hold citizenship from one of the following countries or region: Bangladesh, Cambodia, Hong Kong, India, Indonesia, Macau, Malaysia, Myanmar, Philippines, South Korea, Sri Lanka, Taiwan, Thailand;
  - 3) Possess a minimum of 8 years of formal education with a recognized certificate;
  - 4) Attend a Settling-in Programme if she is a first-time FDW;
  - 5) Not be related to her employer; and
  - 6) Pass a medical examination screening the FDW for 4 types of infectious diseases (tuberculosis, HIV, syphilis, and malaria).<sup>59</sup>

---

<sup>52</sup> Charan Bal, "Myths and Facts: Migrant Workers in Singapore" <<https://newnaratif.com/research/myths-and-facts-migrant-workers-in-singapore/-ftn10>> (accessed 12 July 2018).

<sup>53</sup> MOM website, "Work passes and permits" <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-worker/sector-specific-rules/security-bond>> (accessed 13 July 2018).

<sup>54</sup> Shirlena Huang & Brenda Yeoh, "The Difference Gender Makes: State Policy and Contract Migrant Workers in Singapore" *Asian and Pacific Migration Journal* 2003; 12(1-2): 75-97.

<sup>55</sup> On 1st January 2013, the mandatory 'day off' policy for domestic workers came into effect. To ensure that the FDW gets enough mental and physical rest, she must be given a weekly day off or be compensated a day's wages instead. If the FDW and employer mutually agree to opt for compensation in-lieu, the compensation rate must at least be the FDW's daily wage for each rest day. It should be paid on top of her monthly salary. The FDW's daily wage is calculated by dividing her monthly salary by 26 working days. See Employment of Foreign Manpower Act (Chapter 91A, 2009 Rev Ed) ("EFMA"). See Employment of Foreign Manpower (Work Passes) Regulations 2012 (GN No. S 569/2012), Fourth Schedule ("EFMR").

<sup>56</sup> "Home Sweet Home".

<sup>57</sup> Tan YL, "My employer installed a CCTV camera in my room" *The Independent* (14 January 2017) <<http://theindependent.sg/my-employer-installed-a-cctv-camera-in-my-room/>> (accessed 17 July 2018).

<sup>58</sup> FDWs above 50 years old can only renew their work permits until they reach 60 years old.

<sup>59</sup> MOM website, "Eligibility and Requirements" <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/fdw-eligibility>> (accessed 18 July 2018).

- 3.9 Employers are also obligated to purchase a security bond as well as insurance coverage (medical and personal accident insurance) for their newly-employed FDW.<sup>60</sup> The cost of purchasing the insurance must be borne by the employer.<sup>61</sup>
- 3.10 In addition, since at least 2016, MOM requires employers and FDWs to sign a safety agreement,<sup>62</sup> which ensures that all parties fully understand and acknowledge MOM's restrictions for cleaning the exterior surface of windows.<sup>63</sup>

### C. Applicable statutes

- 3.11 The following table provides an overview of the pieces of legislation that apply uniquely to regulate employment practices and conditions relating to MWs and FDWs. Notably, many of the statutes specifically exclude FDWs from their ambit on the basis that domestic work is difficult to regulate.<sup>64</sup>

---

<sup>60</sup> MOM website, "Security bond" <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/security-bond>> (accessed 18 July 2018).

<sup>61</sup> MOM website, "Insurance requirements" <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/insurance-requirements-personal-accident-insurance>> (accessed 18 July 2018).

<sup>62</sup> See Appendix 9.

<sup>63</sup> MOM Website, "Contracts and safety agreement for foreign domestic worker" <<https://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/employers-guide/contracts-and-safety-agreement>> (accessed 19 September 2018).

<sup>64</sup> *Singapore Parliamentary Debates, Official Report* (18 November 2008) vol 85 at cols 998 (Gan Kim Yong, Minister of Manpower).

**Table 2: Statutes and Subsidiary Legislation relevant for FDWs in Singapore**

Statute	What it is about?	Does it apply to MWs?	Does it apply to FDWs?
Employment Act	The Employment Act is Singapore's main labour law. It provides for the basic terms and working conditions for all types of employees, with some exceptions.	Yes	No
Employment Agencies Act	An Act relating to the regulation of employment agencies.	Yes	Yes
Employment Agencies Rules 2011	The Rules cover various matters relating to the licensing of employment agencies.	Yes	Yes
Employment Claims Act	An Act to facilitate the resolution of employment disputes by providing for the mediation of such disputes, for the constitution, jurisdiction and powers of and administration of justice in the Employment Claims Tribunal.	Yes	No
Employment of Foreign Manpower Act	An Act relating to the employment matters of foreign manpower.	Yes	Yes
Employment of Foreign Manpower (Work Passes) Regulations 2012	The Regulations cover various matters relating to the issuance and conditions of work passes.	Yes	Yes
Immigration Act	An Act relating to immigration into and departure from Singapore.	Yes	Yes
Immigration Regulations	The Regulations cover various matters relating to the issuance and conditions of, <i>inter alia</i> , Singapore visas, special passes, and entry permits.	Yes	Yes
Workplace Injury Compensation Act	An Act relating to the payment of compensation to employees for injuries suffered in the course of their employment.	Yes	No
Workplace Safety and Health Act	An Act relating to the safety, health and welfare of persons at workplaces.	Yes	Yes

## 4. OPTIONS AVAILABLE TO FOREIGN DOMESTIC WORKERS SEEKING REDRESS

4.1 The fastest and most cost-effective solution in resolving disputes between the FDW and employer is through direct negotiations between the parties, before approaching MOM. However, in most cases that require mediation, the employer has turned hostile towards the FDW or remains uncooperative. The FDW then has to approach the MOM for help in facilitating negotiations or mediation with her employer. She may also file a claim before the Singapore Courts with the help of a frontline migrant worker service organisation and its pro bono lawyers.

### I. Preliminary Considerations

#### A. Remaining physically present in Singapore

4.2 An FDW may be hindered from bringing certain claims against her employer due to financial constraints or the inability to remain physically present in the country to lodge and pursue the claim. This is especially so given that in many cases, the FDW cannot afford to remain in Singapore for the length of the case without any employment.

4.3 The table below provides an overview of the various ways an FDW can pursue a claim and whether the course of action would require her to be physically present in Singapore.

**Table 3: Avenues for FDWs to seek recourse in Singapore**

Avenue		Is it applicable to FDWs?	Does it require the FDW to be physically present in Singapore?
Negotiation with the employer		Yes	No
Bringing a claim through MOM		Depends on type of claim	Yes
Filing a civil claim with the Singapore courts	Magistrate's Court/District Court	Yes	No
	Small Claims Tribunal	Depends on type of claim	Yes
	Employment Claims Tribunal	No	Not Applicable

4.4 An employer of an FDW may unilaterally cancel his employee's work permit. This poses a challenge to the FDW as without a work permit, the FDW is unable to remain in Singapore unless she obtains a special pass.<sup>65</sup>

<sup>65</sup> *Justice Delayed*, at p 11.

## **i. Special Pass**

- 4.5 Under immigration regulations, a special pass may be granted to allow a MW to remain in Singapore pending the processing or adjudication of his or her claims that relate to employment disputes.<sup>66</sup> This pass entitles the holder to remain in Singapore for a period usually not exceeding one month but extendable under certain circumstances.<sup>67</sup> Special passes are issued depending on whether the worker has a “legitimate reason to stay in Singapore to resolve a dispute or claim against the employer or to obtain medical treatment and complete the work injury compensation process.”<sup>68</sup> An FDW who is a key witness and is assisting the MOM with investigations into an employment-related offence is likely to be granted a special pass that allows the worker to stay in Singapore. Special passes are also granted to FDWs who are assisting in police investigations.
- 4.6 However, a special pass will not be granted in the following scenarios:
- 1) Where the FDW is pursuing a claim against agents for fees paid to them that may be directed to the Small Claims Tribunal (“SCT”); and
  - 2) Where the FDW is pursuing a claim in civil courts arising out of a salary or work injury dispute.<sup>69</sup>

## **ii. Temporary Job Scheme**

- 4.7 MOM implemented the Temporary Job Scheme (“TJS”) to support MWs who are assisting the authorities with investigations. Under this scheme, some special pass holders are allowed to take up employment either on a new two-year work pass or on a temporary basis until their cases are concluded.
- 4.8 The TJS functions via a central data repository system where MWs seeking employment are “matched” with potential employers. Following this, the employer is required to submit a work permit application for the worker which may last for a period up to six months, and is extendable under certain circumstances.<sup>70</sup>
- 4.9 The availability of work, however, depends on market conditions and the number of employers who choose to participate in the TJS.<sup>71</sup> Therefore, the process of securing a job under this system is slow<sup>72</sup> and is not guaranteed.<sup>73</sup> Employers may also be hesitant to hire an FDW under the TJS due to the stigma attached to such workers – that they are “troublemakers” due to their filing of existing claims with MOM.<sup>74</sup> Ultimately, the employers have little incentive to employ workers on the TJS scheme, and this reduces the effectiveness of the TJS in alleviating the FDW’s financial burden during the claims process.

---

<sup>66</sup> Immigration Regulations (GN No. S 252/1972) (“Immigration Regulations”) reg 15.

<sup>67</sup> Immigration Regulations reg 15(2).

<sup>68</sup> MOM website, “Who’s required to stay for cases: MOM”

<<http://www.mom.gov.sg/newsroom/Pages/PressRepliesDetail.aspx?listid=224>> (accessed 23 July 2018).

<sup>69</sup> *Justice Delayed* at p 26.

<sup>70</sup> *Justice Delayed* at p 29.

<sup>71</sup> *Justice Delayed* at p 29.

<sup>72</sup> Alex Au, “Amin and his elusive employers” TWC2 (13 September 2012) <<http://twc2.org.sg/2012/09/13/amin-and-his-elusive-employers/>> (accessed 23 July 2018).

<sup>73</sup> “The perfect job” TWC2 (3 February 2012) <<http://twc2.org.sg/2012/02/03/the-perfect-job/>> (accessed 23 July 2018).

<sup>74</sup> Alex Au, “Made to stand in the corner like children” TWC2 (26 July 2013) <<http://twc2.org.sg/2013/07/26/made-to-stand-in-a-corner-like-children/>> (accessed 23 July 2018).

## **B. Legal costs in bringing a civil claim**

### **i. Security for costs**

- 4.10 Employers of FDWs are able to apply to the court to order the FDW to pay security for costs.<sup>75</sup> The court will consider all the circumstances of the case such as whether an order would be likely to prevent the plaintiff from pursuing a genuine claim. If granted, the FDW pursuing a civil claim from abroad has to pay a security deposit for their employer's legal costs.

### **ii. Fees payable to the Magistrates Court or District Court**

- 4.11 Court fees are prescribed in a number of statutory regulations and are payable at various stages in civil proceedings such as when documents are filed or lodged with the court, upon sealing of any document and for the provision of copies of documents. In addition, court hearing fees are payable at the time parties are ready for the hearing and when the matter is set down for trial by the plaintiff. Court hearing fees are usually paid by the plaintiff or the party who applies for the hearing date.<sup>76</sup>

- 4.12 Generally, the costs of an action are awarded to the successful litigant.<sup>77</sup> Given that such costs usually amount to at least S\$1,000,<sup>78</sup> FDWs unwilling to take the risk of losing the case and ending up further in debt may choose not to even consider the commencement of civil proceedings and prefer to just remain uncompensated. Here, the FDW's pro bono lawyer can try to have these costs covered by the Law Society's Ad Hoc Pro Bono Scheme, as a means of encouraging the worker not to give up on her legitimate claim. The likelihood of success in getting these costs covered remain to be seen.

### **iii. Fees payable to the Small Claims Tribunal**

- 4.13 A fee is payable when filing a claim at the SCT.<sup>79</sup> This amount varies according to the type of claim being brought forward (consumer claim or non-consumer claim) and the quantum of the claim amount.

### **iv. Ineligibility of Migrant Workers for legal aid under the Legal Aid Bureau**

- 4.14 Only Singapore citizens and Permanent Residents are eligible for legal aid under the Legal Aid Bureau ("LAB").<sup>80</sup> However, lawyers are able to represent FDWs in their individual capacities, on a pro bono basis and usually, this would be the most viable, if not the only option for FDWs to seek compensation against their errant employers or agencies.

---

<sup>75</sup> Rules of Court (Cap 322, R 5, 2014 Rev Ed) ("Rules of Court") O 23.

<sup>76</sup> Supreme Court of Singapore website, "Civil Proceedings: Commencement of an Action - Court Fees and Hearing Fees" <<https://www.supremecourt.gov.sg/rules/court-processes/civil-proceedings/commencement-of-an-action/court-fees-and-hearing-fees>> (accessed 23 July 2018).

<sup>77</sup> Jeffrey Pinsler, "Legal Systems In Asean – Singapore Chapter 4 – Legal Procedure (Civil)" ASEAN Law Association <[https://www.aseanlawassociation.org/papers/sing\\_chp4.pdf](https://www.aseanlawassociation.org/papers/sing_chp4.pdf)> (accessed 23 July 2018) at p 8.

<sup>78</sup> Interview with June Lim, Senior Associate, Fortis Law Corporation, and other lawyers.

<sup>79</sup> The State Courts of Singapore website, "Court Fees" <<https://www.statecourts.gov.sg/ECT/Pages/Court-Fees.aspx>> (accessed 23 July 2018).

<sup>80</sup> Legal Aid Bureau ("LAB") website, "Do I qualify for legal aid?" <<https://www.mlaw.gov.sg/content/lab/en/eligibility/do-i-qualify-for-legal-aid.html>> (accessed 23 July 2018).

- 4.15 A pro bono lawyer may expect to pay court fees (e.g. filing fees, hearing fees), hiring testimonial experts (e.g. psychiatrists, psychologists), hiring translators, securing evidence (such as medical reports) as well as expenses incurred in communicating with the client (whether local or overseas).
- 4.16 However, these costs may be recoverable under the Law Society's Ad Hoc Pro Bono Scheme which helps litigants, including foreign workers, defray the costs involved in the litigation process. The Law Society also has psychiatrists and other professional service providers who may provide a reduced rate to litigants who are part of the Ad Hoc Scheme.
- 4.17 An application to the Court while the case is pending or upon successful completion of the case is also an option to seek a waiver of costs or a recovery of disbursements.
- 4.18 The relevant rules of court are illustrated in the table below.

**Table 4: Rules of Court relating to Waiver of Costs and Recovery of Disbursements**

Rules of Court	Description
Order 91, Rule 5	<p>Gives the Registrar the discretion to waive or defer the payment of the whole or any part of any fee on such terms and conditions as he considers fit. The Supreme Court has posted some guidelines on their website regarding the exercise of this discretion. In general, fees can be waived or refunded if:</p> <ol style="list-style-type: none"> <li>1) The payment of fees would cause undue financial hardship;</li> <li>2) The proceedings concern matters of genuine public interest and would not be able to proceed if the fee was required; or</li> <li>3) The applicant organisation has been given a waiver.</li> </ol> <p>These guidelines are to be used in conjunction with Form 14B of the Supreme Court (Form Showing Lack of Means) in accordance to Paragraph 87B of the Supreme Court Practice Directions. Although Paragraph 87B explicitly cites O 91 r 5, it applies to appeals only. Furthermore, this paragraph does not appear in the State Courts Practice Directions. The relevant document in e-Litigation is Form B1.</p>
Order 90A, Rule 1(4)	<p>Registrar may waive, defer or refund the Hearing Fees upon application or request in accordance with the Rules of Court or the specific provisions under which the action is commenced. The relevant document in e-Litigation is Form C23 (waiver).</p>
Order 59, Rules 2(2) and 3(2)	<p>Recovery of disbursements may be sought for successful cases. Notably, In <i>SATS Construction Pte Ltd v Islam Md Ohidul</i>,<sup>81</sup> the plaintiff was awarded costs, including attorney's fees, even though he was represented by a pro bono counsel.</p>

<sup>81</sup> *SATS Construction Pte Ltd v Islam Md Ohidul* [2016] 3 SLR 1164.

## II. Negotiations with the employer

- 4.19 As a preliminary step, private negotiations may be undertaken between the FDW and her employer. For this purpose, a neutral third party might be able to help in facilitating such negotiations. Lawyers that assist at or with frontline migrant worker service organisations may also assist and represent FDWs in settlement negotiations with the client's employer prior to the FDW lodging a complaint with MOM or pursuing a claim at the civil courts. However, an FDW may be reluctant to pursue negotiations due to the possibility of being repatriated or being victim of ill treatment and harassment by their employers as a form of retaliation.
- 4.20 If negotiations end successfully, a clear and accurate written record of the agreement should be signed and dated by both parties. It is preferable that the document should be signed in the presence of a witness. If negotiations seem to be an unsuccessful effort for both parties, the FDW may then report her case to the MOM and/or commence civil proceedings in Singapore or from her home country.
- 4.21 At the outset of negotiations, the employers should be forewarned that the failure to negotiate may result in a more favourable outcome for the FDW in her pursuit of compensation via the MOM or through her claim in civil courts as a written record of attempted negotiations prove that an attempt to resolve the matter was done in good faith.<sup>82</sup>

## III. Approaching the Ministry of Manpower

- 4.22 MOM provides several mechanisms for a MW to seek redress such as mediation or to facilitate the making of a claim under the Employment Claims Tribunal ("ECT").<sup>83</sup> Typically, a claim made to the MOM can be resolved in less than a year.<sup>84</sup> It should be noted that it is not open to the FDW to bring up a contractual salary-related claim at the ECT.<sup>85</sup>
- 4.23 FDWs may report any issue pertaining to infringements of their rights to the MOM via the following avenues:<sup>86</sup>
- 1) Reporting to the FDW Helpline at 1800 6339 5505 (+65 6339 5505 for overseas callers);
  - 2) Reporting to the Centre for Domestic Employees (24 hours) at 1800 225 5233;
  - 3) Personally make a complaint at MOM Services Centre – Hall A located at 1500 Bendemeer Road (S) 339946;
  - 4) Report the infringement online using eForms on the MOM website; or
  - 5) Email to mom\_fmmd@mom.gov.sg.

---

<sup>82</sup> 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 consider "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, O 59 r 5(c).

<sup>83</sup> The ECT falls within the purview of the State Courts and was established under the Employment Claims Act 2016 (GN No. 21/2016) ("Employment Claims Act").

<sup>84</sup> "Nabbing immigration offenders affects special pass holders too" *TWC2* (28 September 2005) <<http://twc2.org.sg/2012/09/28/nabbing-immigration-offenders-affects-special-pass-holders-too/>>.

<sup>85</sup> MOM website, "Managing employment disputes" <<https://www.mom.gov.sg/employment-practices/managing-employment-disputes>> (accessed 29 August 2018)

<sup>86</sup> MOM website, "What should I do if an FDW has not been paid, is overworked, or not given enough food?" <<http://www.mom.gov.sg/faq/work-permit-for-fdw/what-should-i-do-if-an-fdw-has-not-been-paid-is-overworked-or-not-given-enough-food>> (accessed 18 July 2018).

- 4.24 An FDW may also bring claims to MOM with a course of action pursuant to any legislation that apply to FDWs. For example, a claim against an employment agency may be brought under the Employment Agencies Act and a claim for infringements of employment regulations may be brought under the Employment of Foreign Manpower Act<sup>87</sup> (“EFMA”).
- 4.25 Besides contacting MOM directly, an FDW might also do so by approaching a frontline organisation for assistance. Generally, whether the FDW approaches MOM on their own or through referral by frontline organisations, the process undertaken is similar. An investigating officer from MOM will contact the employer in relation to the FDW’s complaints and attempt to resolve the dispute. If this fails, MOM might organise a mediation session between both the employer and the FDW. However, it should be noted that the process is not formalistic or fixed and may vary from case to case.
- 4.26 MOM judgments usually result in monetary remedies such as damages and compensation. A successful judgment in favour of the FDW has the force of law and may be enforced by the FDW’s lawyer on her behalf if the FDW has returned to her home country through applications for a garnishee order or a writ of seizure and sale.<sup>88</sup>

#### IV. Filing a claim in the Singapore civil courts

- 4.27 When negotiations have failed or when the FDW has returned back to her home country, a civil claim may still be pursued.

##### A. Overview of the Singapore court system

- 4.28 The Singapore court system consists of two tiers – the State Courts and the Supreme Court.
- 4.29 The State Courts include four courts that hear civil claims:<sup>89</sup>
- 1) The District Court hears claims for amounts in dispute that do not exceed S\$250,000;<sup>90</sup>
  - 2) The Magistrate’s Court hears claims for amounts in dispute not exceeding S\$60,000;
  - 3) The SCT hears any claim not exceeding S\$20,000 (or up to S\$30,000 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; and
  - 4) The ECT, which has been mentioned previously.<sup>91</sup>
- 4.30 The Supreme Court consists of the High Court and the Court of Appeal. The High Court hears civil claims for amounts in dispute exceeding S\$250,000,<sup>92</sup> and the Court of Appeal hears appeals of cases from the High Court, but only on issues of law.<sup>93</sup>

<sup>87</sup> Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed).

<sup>88</sup> Rules of Court O 45.

<sup>89</sup> The State Courts of Singapore website “Processes & Procedures: Going to Court on Civil Matters” <<https://www.statecourts.gov.sg/CivilCase/Pages/Going-to-court-on-civil-matters.aspx>> (accessed 23 July 2018).

<sup>90</sup> “Amount in dispute” refers to the amount that the claimant, i.e. the client, is trying to claim through his lawsuit.

<sup>91</sup> See para 4.23 above.

<sup>92</sup> The Law Society of Singapore (“LawSoc”) website “You & the Law” <<http://www.lawsociety.org.sg/forPublic/YoutheLaw/SingaporeCourtSystem.aspx>> (accessed 23 July 2018).

<sup>93</sup> LawSoc website “You & the Law” <<http://www.lawsociety.org.sg/forPublic/YoutheLaw/SingaporeCourtSystem.aspx>> (accessed 23 July 2018).

- 4.31 Parties may appeal against any decision from the State Courts, whether given by a District Judge or Magistrate, to the High Court.<sup>94</sup> From the High Court, parties may appeal to the Court of Appeal unless the claims are barred from appeal under the law.<sup>95</sup>
- 4.32 Generally, the claims of FDWs are unlikely to exceed S\$250,000. Therefore, it is likely that their claims will fall within the jurisdiction of either the District Court, the Magistrate's Court, or the SCT.

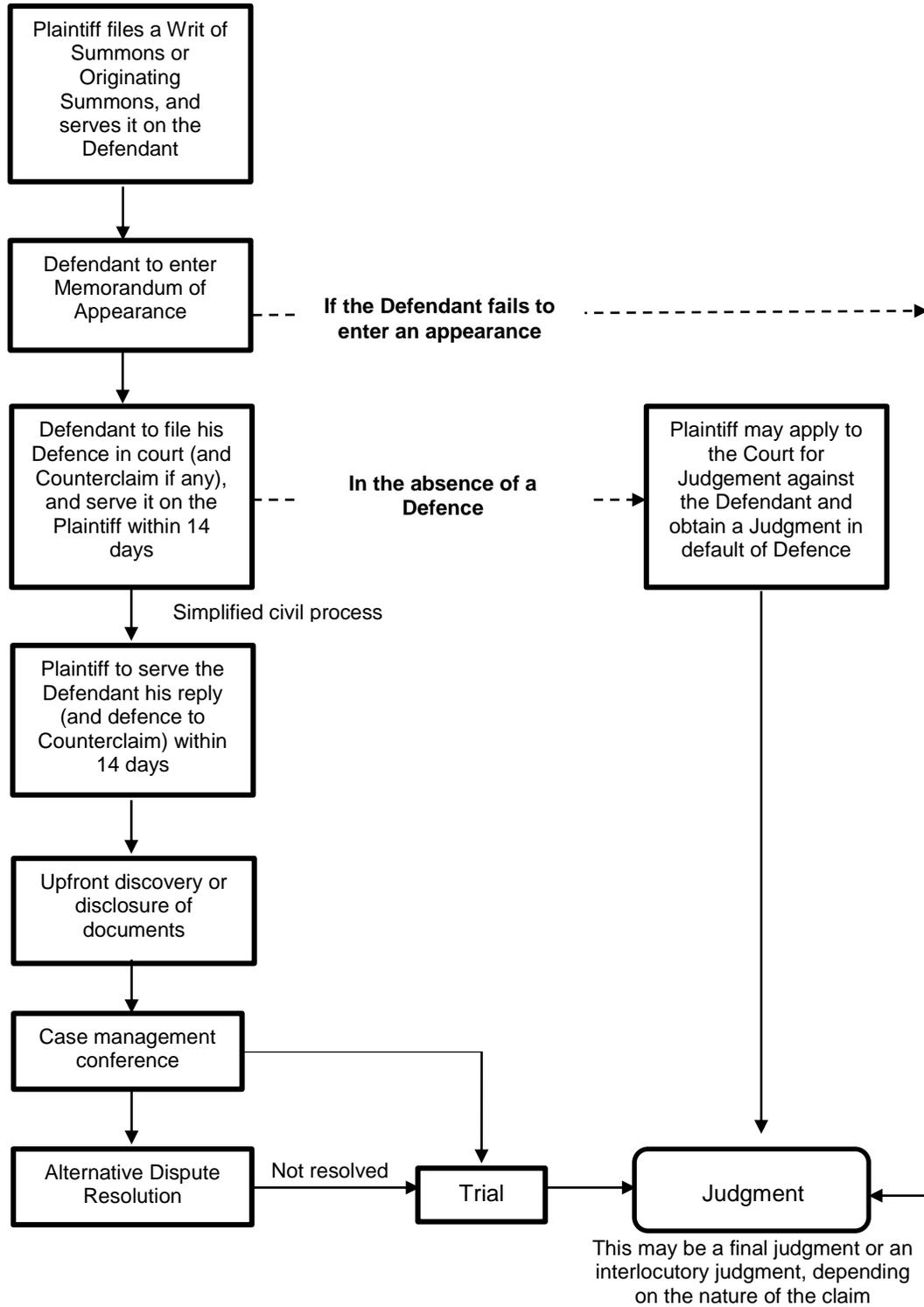
---

<sup>94</sup> LawSoc website "You & the Law" <<http://www.lawsociety.org.sg/forPublic/YoutheLaw/SingaporeCourtSystem.aspx>> (accessed 23 July 2018).

<sup>95</sup> LawSoc website "You & the Law" <<http://www.lawsociety.org.sg/forPublic/YoutheLaw/SingaporeCourtSystem.aspx>> (accessed 23 July 2018).

## B. Bringing a claim to the Magistrate's Court or District Court

4.33 The following chart provides a brief overview of the process for bringing a civil claim to the Magistrate's Court or District Court.



**i. Issuing a Writ of Summons or Originating Summons**

- 4.34 A Writ of Summons (“Writ”) is a court document used to commence civil legal proceedings in Singapore. The FDW (henceforth known as the plaintiff or the client) commences legal proceedings against her employer (henceforth known as defendant) by filing a Writ.
- 4.35 An action will only commence by way of originating summons when it is required by statute or when the case is unlikely to involve any substantial dispute of fact. Most civil actions in tort and contract are commenced by way of a Writ.
- 4.36 The Writ is filed in the District Court or Magistrate’s Court by the client making a claim subsequently served on the defendant. The Writ must be appended with a statement of claim, which is a court document that sets out the following matters:
- 1) The respective identities of the plaintiff and defendant;
  - 2) The nexus or link between the parties;
  - 3) The relevant obligations (which the plaintiff claims to have been breached);
  - 4) The material facts in support of the breach;
  - 5) The losses suffered by the plaintiff due to the breach; and
  - 6) The relief claimed by the plaintiff.

**ii. Contesting the claim – entering an appearance**

- 4.37 The defendant who wishes to contest the client’s claim in the writ served on him or her, must inform both the Court and the client of this by entering an “appearance” through a lawyer. The defendant is required to file (and serve) the memorandum of appearance through e-Litigation within eight days after being served with the Writ.
- 4.38 If the defendant does not wish to contest the client’s claim, the defendant should get in touch with the plaintiff to settle the claim immediately. In doing so, both parties would ultimately incur less legal costs.<sup>96</sup>
- 4.39 If the defendant fails to enter an appearance within the time specified in the Writ, the Court may enter a judgment against him or her.

**iii. Contesting the claim – filing a defence and/or counterclaim**

- 4.40 Where the defendant has entered an appearance and intends to contest the claim, the defendant must file his or her defence within 14 days from the date on which the memorandum of appearance was filed or the date on which the statement of claim was served (whichever is later).<sup>97</sup> The defendant must also file his or her defence in Court and serve a copy of the defence on the client’s address of service or on the client’s solicitors at their office address. If the defendant alleges that he or 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.
- 4.41 The plaintiff may serve on the defendant her reply (and defence to a counterclaim), within 14 days from the date on which the defence (and counterclaim) is served on the plaintiff.

---

<sup>96</sup> The Supreme Court website, Singapore Judicial System <<https://www.supremecourt.gov.sg/about-us/the-supreme-court/singapore-judicial-system>> (Accessed 18 July 2018).

<sup>97</sup> Rules of Court, O 18 r 2.

- 4.42 If the defendant has been served with the Writ 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 to enter judgment against the defendant.

#### iv. Simplified civil process

- 4.43 For district court cases filed on or after 1 November 2014, parties may choose to opt into the simplified process. This new process features an upfront disclosure of documents so that parties will be able to conduct an assessment on the options in the early stages. Moreover, integral to the simplified process is the case management conference (“CMC”), conducted within 50 days after the defence has been filed. The CMC allows the court to identify and narrow the relevant issues, deal with interlocutory matters and consider all available options to resolve the case. Subsequently, parties are also encouraged to explore alternative dispute resolution options such as arbitration or mediation.

### C. Bringing a claim to the Small Claims Tribunal

- 4.44 An example of a claim that may be directed to the SCT is a claim against an employment agency for the overcharging of agency fees. For all claims filed in the SCT after 10 July 2017, the FDW must do so online via the State Courts website.<sup>98</sup>
- 4.45 The following items have to be submitted:<sup>99</sup>
- 1) A completed and signed original Claim Form;
  - 2) 3 photocopies of the above original Claim Form;<sup>100</sup>
  - 3) 1 photocopy each of any other supporting documents;<sup>101</sup>
  - 4) A photocopy of the FDW’s identification document; and
  - 5) A photocopy of the identification document of the practitioner who is filing the claim on the behalf of the FDW.
- 4.46 Any document in a foreign language has to be submitted with a certified translation of the same. An example of such a document includes agency agreements or employment contracts in the FDW’s native language.
- 4.47 A consultation between both parties will be scheduled within 10 to 14 days after the filing of the claim.<sup>102</sup> During this consultation, the Registrar or Assistant Registrar of the SCT will attempt to mediate a settlement.<sup>103</sup> Subsequent consultations may be set, at the discretion of the Registrar or Assistant Registrar.<sup>104</sup>

---

<sup>98</sup> The State Courts of Singapore website, “Filing a claim” <<https://www.statecourts.gov.sg/SmallClaims/Pages/LodgingaClaim.aspx>> (accessed 23 July 2018).

<sup>99</sup> The State Courts of Singapore website, “Filing a claim” <<https://www.statecourts.gov.sg/SmallClaims/Pages/LodgingaClaim.aspx>> (accessed 23 July 2018).

<sup>100</sup> If the client had indicated in the Summary of their Claim Form that they are referring to any attached document, photocopies of such attached documents should be made as well. Please note that the Claim Form and attached documents referred to in “Summary of the said Claim Form” will be forwarded to the other party by the Small Claims Tribunals (“SCT”).

<sup>101</sup> If the client is faxing the documents and the total number of pages of such supporting documents exceed three pages, do not fax the supporting documents. Instead, bring the original(s) and one photocopy, and hand it to the Registrar or Assistant Registrar hearing the Consultation.

<sup>102</sup> SCT will serve the claim on the Respondent by post. Alternatively, the client can also serve the court papers personally to the Respondent. When doing this, a written statement of such service at the Consultation should be provided.

<sup>103</sup> SCT, The State Courts of Singapore, “General Reference BOOKLET” <[https://www.statecourts.gov.sg/TBD/Documents/SMALL CLAIMS TRIBUNALS\\_REFERENCE BOOKLET\\_15 APRIL 2013.pdf](https://www.statecourts.gov.sg/TBD/Documents/SMALL CLAIMS TRIBUNALS_REFERENCE BOOKLET_15 APRIL 2013.pdf)> at p 8.

<sup>104</sup> SCT, The State Courts of Singapore, “General Reference BOOKLET” <[https://www.statecourts.gov.sg/TBD/Documents/SMALL CLAIMS TRIBUNALS\\_REFERENCE BOOKLET\\_15 APRIL 2013.pdf](https://www.statecourts.gov.sg/TBD/Documents/SMALL CLAIMS TRIBUNALS_REFERENCE BOOKLET_15 APRIL 2013.pdf)> at p 9.

- 4.48 If no settlement is reached, a date will be set for both parties to attend a hearing before a Referee within 7 to 10 days of the consultation.<sup>105</sup>
- 4.49 If a settlement is reached, the FDW may withdraw her claim by informing the SCT of her decision in writing.<sup>106</sup> Additionally, both parties must inform the SCT in writing about the settlement.<sup>107</sup>
- 4.50 Claiming compensation through the SCT is usually cost-effective and relatively fast. However, the following should be borne in mind before doing so:
- 1) The SCT cannot hear employment or tort claims;<sup>108</sup>
  - 2) All claims must be made one year from the date that the cause of action accrued; and
  - 3) The claimant must be physically present in Singapore, as lawyers are not permitted to represent any of the parties in the proceedings.

## 5. CONCLUSION

- 5.1 The insufficient protection accorded to FDWs under Singapore laws and regulations has resulted in the continuous vulnerability of these workers to employment violations and mistreatment. As we await judicial and legislative developments in this area, various stakeholders can stand in and assist the FDWs with their legal claims. The work of practitioners is critically important in enforcing the right to just compensation while sending a signal to wrongdoers that justice will be sought for their violations of law. In the following chapter, the types of civil claims that may be pursued will be discussed as well as the accompanying legal frameworks and evidence collection procedures that are necessary in establishing these claims.

---

<sup>105</sup> SCT, The State Courts of Singapore, "General Reference BOOKLET" <[https://www.statecourts.gov.sg/TBD/Documents/SMALL CLAIMS TRIBUNALS REFERENCE BOOKLET 15 APRIL 2013.pdf](https://www.statecourts.gov.sg/TBD/Documents/SMALL_CLAIMS_Tribunals_Reference_Booklet_15_April_2013.pdf)> at p 10.

<sup>106</sup> SCT, The State Courts of Singapore, "General Reference BOOKLET" <[https://www.statecourts.gov.sg/TBD/Documents/SMALL CLAIMS TRIBUNALS REFERENCE BOOKLET 15 APRIL 2013.pdf](https://www.statecourts.gov.sg/TBD/Documents/SMALL_CLAIMS_Tribunals_Reference_Booklet_15_April_2013.pdf)> at p 11.

<sup>107</sup> The State Courts of Singapore website, "Filing a claim"

<<https://www.statecourts.gov.sg/SmallClaims/Pages/LodgingaClaim.aspx>> (accessed 23 July 2018).

<sup>108</sup> SCT, The State Courts of Singapore, "Checklist" <[https://www.statecourts.gov.sg/SmallClaims/Documents/GUIDE CHECKLIST 25 JUL 2014.pdf](https://www.statecourts.gov.sg/SmallClaims/Documents/GUIDE_CHECKLIST_25_JUL_2014.pdf)> (accessed 23 July 2018).

**CHAPTER TWO**  
**COMMON LEGAL PROBLEMS AND AVAILABLE REMEDIES**

## CHAPTER 2: COMMON LEGAL PROBLEMS AND AVAILABLE REMEDIES

### 1. INTRODUCTION

- 1.1 This chapter highlights common problems faced by FDWs working in Singapore and lays out the available substantive civil causes of action they can pursue. 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 remedies sought.
- 1.2 Section 2 provides a brief graphical overview of the problems faced by FDWs, as well as the possible causes of action and available remedies. The time limits to file a claim under the specific causes of action are also detailed in this section.
- 1.3 Section 3 addresses one of the most common problems faced by FDWs—salary disputes. Salary disputes generally involve either the non-payment of salary or the underpayment of an agreed salary.<sup>109</sup> The section analyses these situations in two main parts: where there is a single employment agreement, and where there are multiple employment agreements.
- 1.4 Section 4 is a brief overview of other breaches of the employment contract between an employer and an FDW that typically arise, as well as the relevant remedies.
- 1.5 Section 5 looks at four torts<sup>110</sup> that are commonly committed against FDWs, and the legal remedies available to the FDWs. These torts are: (i) accidents that cause injury to the FDW, (ii) intentional acts that cause injury to the FDW, (iii) false reports and complaints against the FDW, and (iv) harassment by employers and/or employment agencies.
- 1.6 Section 6 looks at the increasingly growing problem of illegal deployment, and the claims that practitioners can try to pursue on behalf of their clients to gain fair compensation for non-domestic work done, or additional domestic work done at unauthorised addresses.
- 1.7 The maximum amount of agency fees that Singaporean employment agencies can charge FDWs is one month's salary for every year of employment. However, many FDWs have found themselves charged at least six months' salary and above in agency fees, even though employment agencies can charge a maximum of two months' salary for a standard two-year employment contract. Section 7 shows how an FDW might be able to claim the amount that she has been overcharged.
- 1.8 Finally, Section 8 discusses the type of evidence that would be required to establish the civil claims detailed above. It also provides tips for evidence collection and how to combat the practical obstacles case workers and FDWs might face when collecting evidence.

---

<sup>109</sup> There are also other cases of wrongful payment of salary, like delayed payment, or an employer's "safekeeping" of the FDW's monthly salary even when FDW asks for it but these will not be discussed in detail in this Manual.

<sup>110</sup> The meaning of a "tort" will be further elaborated on in the section—for now, suffice to note that it is a civil claim against another person that is non-contractual.

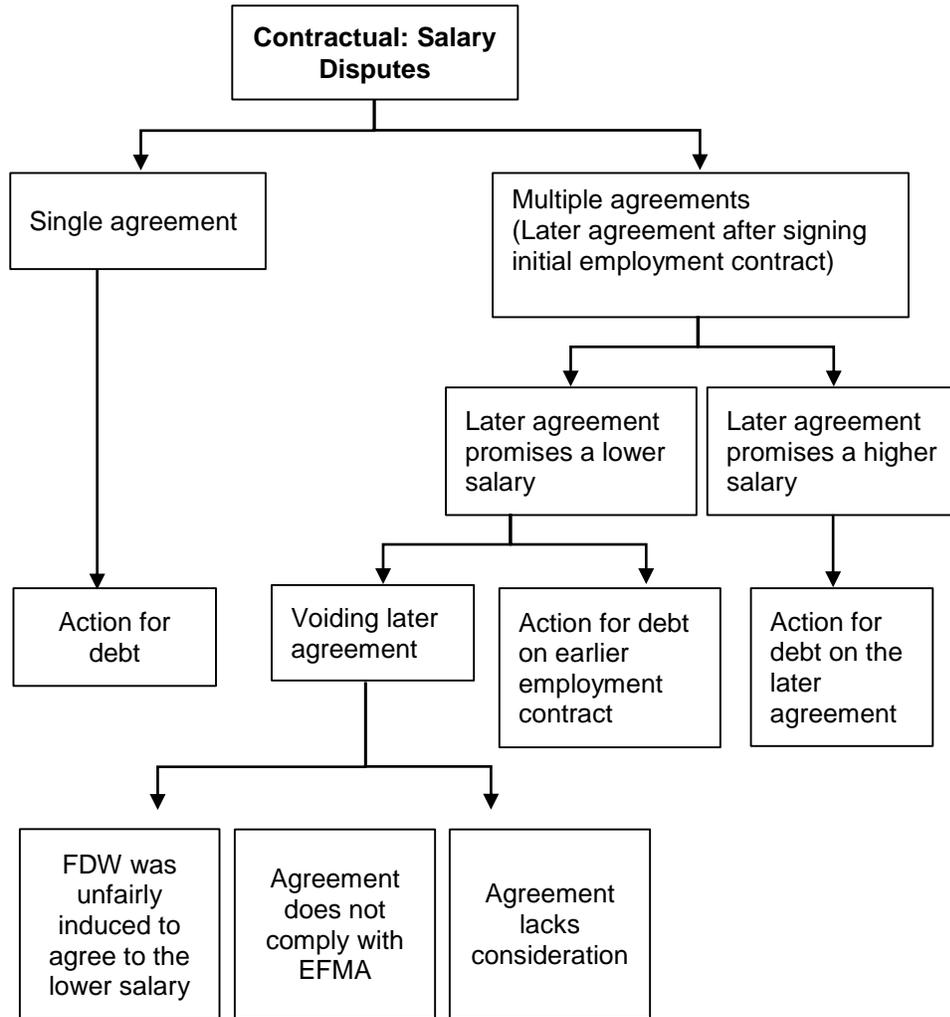
## 2. OVERVIEW OF PROBLEMS FACED BY FOREIGN DOMESTIC WORKERS

2.1 Below are table charts for each the common problems faced by FDWs. The problems have been organised in the order in which they appear in this chapter.

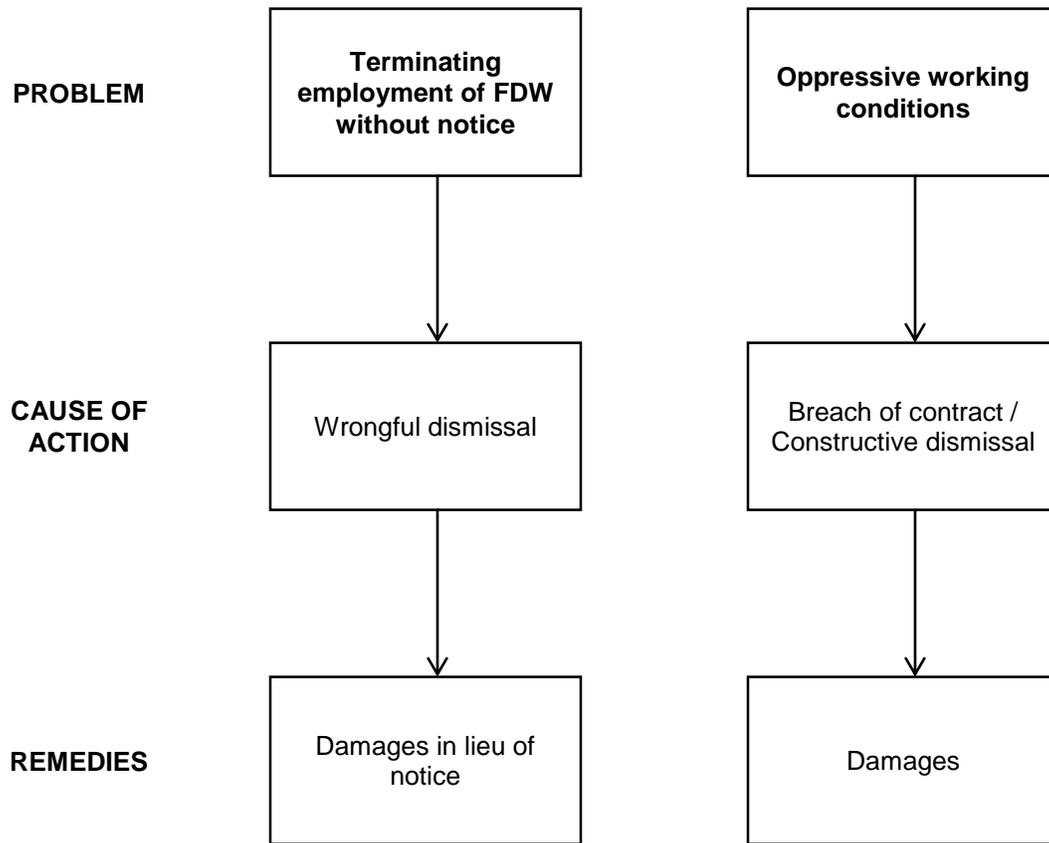
### I. Salary disputes

**PROBLEM**

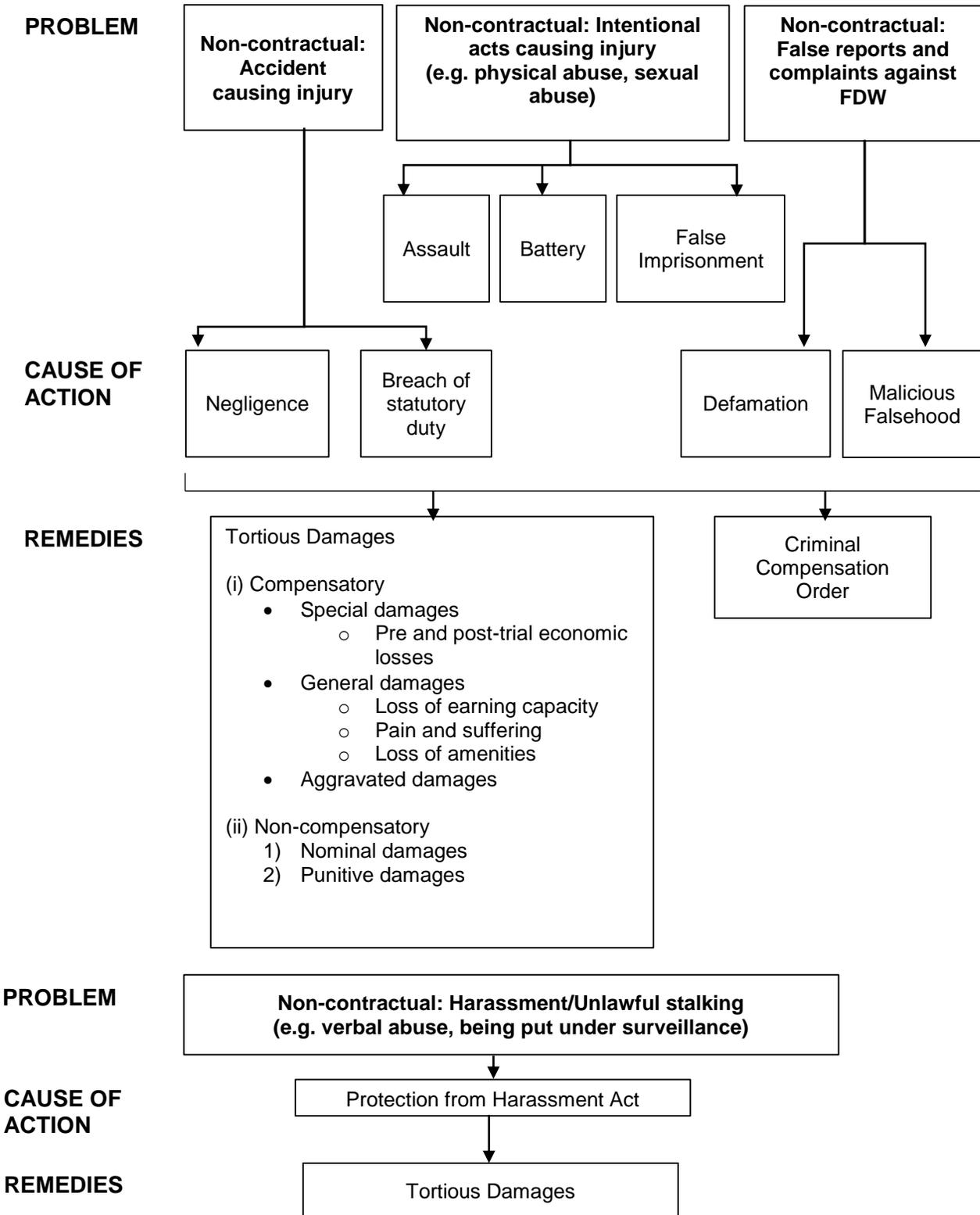
**CLAIM/  
REMEDY**



## II. Other breaches of the employment contract



### III. Torts committed against Foreign Domestic Workers



#### IV. Illegal deployment

##### PROBLEM

Contractual: Illegal deployment

Claiming money for work done outside scope of employment

##### CLAIM/ REMEDY

Restitution

Restitutory value of work done by FDW

#### V. Overcharging of agency fees

##### PROBLEM

Contractual: Overcharging of agency fees

Maximum amount: 2 months' salary for 2 year contract period

##### CLAIM/ REMEDY

Restitution

Small Claims Tribunal (claim to be submitted within one year of the date the cause of action accrued)

Fees paid in excess

##### Note:

For contractual actions,

- The time limit to bring actions is 6 years
- You can only get financial compensation from a defendant with sufficient funds. Ensure that the employer or agency that will be made the defendant to a civil suit is not bankrupt or in liquidation.

For non-contractual actions,

- The time limit to bring actions under tort is 6 years; but where personal injury results from the defendant's negligence or breach of duty, the time limit is 3 years
- You can only get financial compensation from a defendant with sufficient funds. Ensure that the employer or agency that will be made the defendant to a civil suit is not bankrupt or in liquidation.

### 3. SALARY DISPUTES

#### I. Overview of salary disputes

- 3.1 Salary disputes that involve FDWs commonly arise in one of the following two factual scenarios: (i) where a single employment agreement exists; or (ii) where multiple employment agreements to perform work for the same employer exist.

##### A. Where a single agreement exists

- 3.2 Where a single agreement exists, the rate of pay is undisputed. Here, when there is a salary dispute, the aim of the FDW is simply to claim for a debt owed to her through enforcing that term in the agreement. Typically, the FDW wishes to make a claim for her unpaid salary based on the rate of pay stated in her employment contract or, if for some reason there is no employment contract, the IPA through which she was gainfully employed in Singapore. The focus is on proving the amount of salary that was not paid to the FDW by the employer.

##### B. Where multiple agreements exist

- 3.3 Multiple agreements would exist where the FDW entered into another agreement with a different term on salary as compared to the initial employment contract. The later agreement can either be in oral or written form. When there is a salary dispute in this scenario, the dispute typically relates to the rate of pay.
- 3.4 By way of illustration, a Filipino FDW signs her Philippine Overseas Employment Administration (“POEA”) standard employment contract when she is still residing in the Philippines. Upon her arrival in Singapore, she may be made to sign a new contract with her employer, providing for a different rate of pay than that set out in the POEA contract.
- 3.5 There would usually be two kinds of agreements: (i) an agreement entered into later in time stating a higher salary; or (ii) a contract entered later in time providing for a lower salary than what had been agreed or prescribed under the first agreement. While the amount owed must also be proven, the focus is on identifying the enforceable term on salary.
- 3.6 Where the FDW is promised a higher salary, two scenarios typically arise: first, the employer asks the FDW to do more work than originally agreed at the time of signing the initial employment contract; or second, the FDW does the same amount of work as originally agreed.
- 3.7 Where the FDW is promised a lower salary, the employer usually tells the FDW that her salary is going to be reduced and the FDW agrees. More often than not, the FDW agrees to this salary cut as she feels that she has no other choice, having incurred debt and having no other work she could do in Singapore. In a 2012 study by HOME, 62% of the 151 FDWs they interviewed reported having agreed to certain terms under the contract in their home country only to arrive in Singapore and be presented with new, less favourable terms.<sup>111</sup>

---

<sup>111</sup> “The Invisible Help, Trafficking into Domestic Servitude in Singapore” HOME (2012), <<http://www.home.org.sg/wp-content/uploads/2015/06/The-invisible-help.pdf>> (last visited 16 December 2016).

## II. Remedies and rules

### A. Where a single agreement exists

3.8 Where a single agreement exists, the FDW can seek to enforce a term in a written contract in an action for debt.

#### i. Bringing an action for debt on the basis of a written contract

3.9 Where a written contract (employment contract or the IPA, in cases where there is no employment contract) provides for payment of salary in return for the FDW's work, the FDW is entitled to this salary for her period of employment. Should her employer fail to pay her salary, her remedy is to bring an action for debt to collect the unpaid salary based on the rate of pay stated in the written contract.

3.10 There are four aspects to an action for debt that should be noted. First, the FDW must prove the existence of a term stating the rate of pay. This can be done by producing the written contract (employment contract or the IPA, as the case may be). Second, the FDW must prove that the debt exists by providing some evidence that her employer had not paid her what was due to her. Bank statements are typically taken as proof of payments. Then, the FDW must show that she has not been paid her salary. The burden then shifts to the employer to prove that he or she has made the payment as a defence to the FDW's claim.

### B. Where multiple agreements exist

3.11 Where there are multiple agreements setting out different rates of pay, the FDW generally seeks to make a claim for the shortfall, i.e., the difference between the higher rate of pay agreed to and the lower rate of pay, through an action for debt, relying on the term with a higher salary. The considerations in bringing an action for debt similarly apply, but with the later agreement being argued to amount to a 'variation' of the initial employment contract. Whether the higher salary can be enforced depends on two factors: first, whether the contract was varied and second, whether this variation is legally enforceable.

#### i. Later agreement promises a higher salary

3.12 Where the later agreement promises a higher salary, the FDW has to prove that the contract was varied and that the variation is legally enforceable.

##### ***(a) Proving that the contract was varied***

3.13 It would be easier to prove that the contract was varied if there was a written agreement between the parties, especially where the written agreement was signed by both parties. However, where the agreement is verbal, it would be more difficult to prove that this agreement exists. Unfortunately, most agreements for a higher rate of pay between the FDW and the employer are verbal, making proof of variation challenging to collect and present.

3.14 Statements by the employer and worker can be sufficient to prove that an oral agreement exists.<sup>112</sup> If there is no other direct evidence such as audio recordings, the existence of the

---

<sup>112</sup> In previous cases, the finding of oral terms has been made based on testimony given by an executive director and a manager, see

oral agreement can also be proven by looking at the conduct of the parties, such as where a higher salary is consistently provided to the FDW for the relevant time period.<sup>113</sup>

- 3.15 However, it would be highly difficult for the FDW to provide evidence of the separate agreement varying the original one if it seems that all the terms of their arrangement have been included into the contract<sup>114</sup> or where the original contract has a term stating that states that the written terms represent the entire contract.<sup>115</sup>

**(b) Proving that the variation to the contract is legally enforceable**

- 3.16 As laid out above, there are two factual scenarios in which a higher salary is promised: (i) a higher salary for more work; or (ii) a higher salary for the same amount of work.

- 3.17 When a contract is varied, the general rule is that the variation must be supported by fresh consideration.<sup>116</sup> Consideration represents a return given in exchange for the promise sought to be enforced.<sup>117</sup> This then gives the FDW the right to enforce the promise made by the employer. This return need not be adequate but must be sufficient.<sup>118</sup>

**1. Higher salary for more work**

- 3.18 Typically, where an employer promises a higher salary for more work, the employer asks the FDW to do more work than what is (i) stated within the written contract; or (ii) agreed between the employer and FDW at the time of signing the employment contract.

- 3.19 Under these circumstances, it is likely that the term on higher salary would be enforceable by the FDW. This is because the extra work, such as taking on additional household chores or taking care of additional members within the same household is likely to be deemed as a sufficient return by the FDW for the higher salary. However, this would only be the case if the extra work was taken on after or as a result of the promise of a higher salary being made.<sup>119</sup>

- 3.20 In the event that the extra work is done before the promise of a higher salary was made to the FDW, the FDW can exceptionally have the higher salary term enforced, provided that the following 3 factors can be established: (i) the FDW did the extra work on the employer's request; (ii) it was clearly understood or implied at the time of the request that the FDW would be rewarded for her extra work at a later date; and (iii) the promise of reward must have been legally enforceable if it was promised in advance.

- 3.21 It is likely that the FDW took on extra work at the employer's direction or instruction - as opposed to taking it on of her own volition. Establishing that it was clearly understood or

---

*Melaka Farm Resorts (M) Sdn Bhd v Hong Wei Seng* [2004] 6 MLJ 506 ("*Melaka Farm Resorts*") at [13].

<sup>113</sup> In the case of *Melaka Farm Resorts*, 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.

<sup>114</sup> Parole evidence rule, as per the Evidence Act (Cap 97, 1997 Rev Ed) ("Evidence Act") s 94.

<sup>115</sup> Such terms are also known as entire agreement clauses.

<sup>116</sup> Tan Cheng Han, "Contract modifications, consideration and moral hazard" (2005) 17 SAclJ 566.

<sup>117</sup> *Gay Choon Ing v Loh Sze Ti Terence Peter and Another Appeal* [2009] 2 SLR 332 ("*Gay Choon Ing*") at [66].

<sup>118</sup> *Chappell & Co Ltd v Nestle Co Ltd* [1959] UKHL 1. In this case, Nestle offered to sell gramophone records at a discount price to anyone presenting 3 wrappers from their chocolate bars. The court found that these 3 wrappers were sufficient consideration and Nestle could sell the records.

<sup>119</sup> Past consideration is not good consideration. See *Rainforest Trading Ltd and another v State Bank of India Singapore* [2012] 2 SLR 713 at [30].

implied at the time of the request that the FDW would be financially rewarded for her extra work is the challenge, particularly in the context of domestic work done by FDWs.

## 2. Higher salary for the same amount of work

- 3.22 Typically, promising a higher salary for the same amount of work arises where the employer, after signing the contract, agrees to pay the domestic worker a higher salary without asking the domestic worker to do more work.
- 3.23 Whether there is sufficient consideration in this situation depends on the individual facts of each case. The law on this point is unclear, but it may be possible to identify a practical benefit that may suffice as consideration.<sup>120</sup> There is arguably a practical benefit to the employer, in the way of better work being done by a financially-motivated FDW who has been promised more pay. Alternatively, where the FDW agrees to continue working for the employer, avoiding the need to find alternative performance (in this case, labour) may constitute a practical benefit to the employer, constituting sufficient consideration.

### ii. **Later agreement promises a lower salary**

- 3.24 Where the later agreement promises a lower salary, it is unlikely that the FDW needs to prove that there was a variation. Presumably, it is the employer who would be the one seeking to enforce this later agreement and thus the burden of proving that there was a variation would rest on the employer.

#### **(a) Proving that the variation to the contract is not legally enforceable**

- 3.25 There are three ways in which the FDW can seek to prove that the variation to the contract is not legally enforceable: (i) the agreement does not comply with the requirements set out in the EFMA, (ii) the agreement lacks consideration, thus rendering the later agreement void and (iii) the FDW was unfairly induced to agree to the lower salary, thus rendering the later contract voidable.

#### 1. Agreement does not comply with the EFMA

- 3.26 The EFMA limits salary reductions by the employer or the FDW under three scenarios: first, where the reduction is a condition or is in return for the employment of the FDW, second, where the reduction is a condition or is in return for the continued employment of the FDW, and third, as a financial guarantee related to the employment of the FDW.<sup>121</sup>
- 3.27 Thus, where the agreement to provide a lower salary is made under the above three scenarios, it is unlikely that the term on lower salary would be enforceable. This is because the agreement would be unenforceable due to statutory illegality.<sup>122</sup>

---

<sup>120</sup> It is unclear whether the Singapore courts accept practical benefit to be sufficient consideration. See *Sunny Metal & Engineering Pte Ltd v Ng Khim Ming Eric (practicing under the name and style of W P Architects)* [2007] 1 SLR(R) 853 at [30] and *S Pacific Resources Ltd v Tomolugen Holdings Ltd* [2016] 3 SLR 1049 at [15].

<sup>121</sup> EFMA s 22A.

<sup>122</sup> *Ting Siew May v Boon Lay Choo* [2014] 3 SLR 609 (“*Ting Siew May*”) at [103] - [107]. The SGCA in *Ting Siew May* laid down a two-stage test to determine whether a contract is prohibited under statutory illegality: (1) whether there has been a contravention of the statutory provisions (or subsidiary legislation) concerned; and (2) whether the statutory provision (or subsidiary legislation) concerned was intended to prohibit not only the conduct but also the contract. The failure of the employer to comply with the EFMA will satisfy stage 1. Under stage 2, any reduction to the employee’s monthly salary would likely be unenforceable, since the provisions

## 2. Agreement lacks consideration

- 3.28 As stated above,<sup>123</sup> when a contract is varied, the general rule is that the variation must be supported by fresh consideration. Consideration represents a return given in exchange for the promise sought to be enforced. Only where there is consideration can the employer enforce the terms against the FDW. This return need not be adequate but must be sufficient.
- 3.29 In the context where the FDW accepts a lower salary for the same amount of work as agreed at the time of signing the employment contract, it is unlikely that consideration would be found.<sup>124</sup> Thus, it is unlikely that the term stating a lower salary would be enforceable.

## 3. FDW was unfairly induced to agree to the lower salary

- 3.30 As alluded to above,<sup>125</sup> more often than not, the FDW agrees to a salary cut as she thinks that she has no other choice, i.e., that it is an ultimatum issued by the employer for the FDW to keep her employment. This is especially so given the vulnerability of FDWs and the unequal bargaining power that exists between the FDW and employer.
- 3.31 In some situations, the employer makes use of his or her position of power to pressure, threaten or influence the FDW into agreeing to accept this lower salary.
- 3.32 In these situations, it is possible for the FDW to argue that these later agreements setting out less favourable salary terms should be rendered voidable, for reasons of (a) duress, (b) undue influence, or (c) unconscionability, that will be discussed in section C below.
- 3.33 Where the agreement is voidable, the FDW can seek to declare the agreement void. However, there are limits to voiding the contract. These are: (a) the FDW affirming (i.e. agreeing to) the contract; (b) where restitution is impossible; (c) where third party rights are involved; and (d) (except in the case of fraud) where the right to rescind is not exercised within a reasonable time.<sup>126</sup> The second and the third limitations hardly apply to the context of FDWs.
- 3.34 Where an FDW continues to accept the lower salary even when she is free from the influence of the employer, she would be found to have agreed to the contract and would thus not be able to declare the agreement void.<sup>127</sup> However, situations in which an FDW is completely free from influence of her employer hardly arise in cases of salary disputes, given the relative vulnerable position of the FDW and the severe imbalance in bargaining power between the parties.
- 3.35 Besides seeking a declaration that the contract is void, the FDW might also consider the alternative of bringing a claim of fraudulent misrepresentation. If successful, this might lead

---

are worded to protect vulnerable employees from unscrupulous employers. A lower-salary term would contravene the statute and thus it can be said that the EFMA was intended to prohibit the conduct and the contract.

<sup>123</sup> For an analysis where the later agreement promises a higher salary, specifically to prove that variation to the contract is legally enforceable, see Chapter 2, Section 3 “Salary disputes”.

<sup>124</sup> *Gay Choon Ing* at [97], [102]-[103], citing *Re Selectmove Ltd* [1995] 1 WLR 474 at [480].

<sup>125</sup> See para 3.7 above.

<sup>126</sup> Lee Pey Woan, Pearlle Koh & Tham Chee Ho, *The Law of Contract* (updated 30 April 2015) at [8.10.5], available at <<http://www.singaporelaw.sg/sglaw/laws-of-singapore/commercial-law/chapter-8>> (accessed 22 February 2017).

<sup>127</sup> *Lal Hiranand v Kamla Lal Hiranand* [2006] SGHC 98 at [115], “The right to rescind may be lost by affirmation, and so soon as the undue influence is withdrawn, the action or inaction of the party influenced becomes liable to the construction that he intended to affirm the transaction”.

to a rescission of the contract where the FDW chooses to so rescind. This will be discussed in the following section.

### C. Voiding or rescinding a contract

3.36 There are four doctrines that will allow the contract to be voided or rescinded: duress, undue influence, unconscionability, and misrepresentation. While they are separate doctrines, they generally overlap, and claims under each doctrine can be pursued concurrently.

#### i. Duress

3.37 Duress involves a threat and a demand. Here, the demand would be for the FDW to accept a lower salary.

3.38 There are three types of threats relevant for making out a claim in duress: first, a threat involving one or more unlawful acts by the employer, second, a threat by the employer to breach a contract, and third, a threat by the employer involving lawful acts. A threat involving unlawful acts is made where the employer threatens to use physical violence or to falsely report a FDW to the police for a crime the employer knows the FDW did not commit. Further, a threat to breach a contract would typically arise where the employer threatens to terminate the FDW's employment. Finally, a threat involving one or more lawful acts can be illustrated by a scenario in which the employer threatens to tell the FDW's spouse that she has a boyfriend, or threatens to complain about the FDW to her employment agency.

3.39 Economic duress could be found to be present where a party threatens to terminate a contract or refuses to perform a contractual duty, either in whole or in part. Economic duress is amongst the most common forms of duress exercised against FDWs.<sup>128</sup> Generally, in deciding whether the economic duress exerted was illegitimate, courts will look at the agreed term and the process used to arrive at the agreement.<sup>129</sup> Events that have happened in the lead up to other agreements between the FDW and the employer could be relevant in assessing the context in which the agreement to provide a lower salary was reached.<sup>130</sup>

3.40 For the FDW to establish that she had agreed to the lower salary because she was under duress, she needs to show that: (i) the threat and demand was illegitimate; and (ii) the threat and demand compelled the FDW to accept the lower salary.<sup>131</sup>

#### **(a) Threat and demand was illegitimate**

3.41 Threats involving unlawful acts are likely to be illegitimate.<sup>132</sup> Threats to breach a contract in the presence of bad faith may lead to the finding that both threat and the demand are illegitimate.<sup>133</sup> A threat that is aimed at exploiting the FDW's weak bargaining position rather

---

<sup>128</sup> There are two other forms of duress, duress to person and duress to goods.

<sup>129</sup> *Goh Bee Lan v Yap Soon Guan and another* [2018] SGHC 11 ("*Goh Bee Lan*") at [20].

<sup>130</sup> *Goh Bee Lan* at [29].

<sup>131</sup> *E C Investments Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)* ("*E C Investments*") [2011] 2 SLR 232 at [51].

<sup>132</sup> *R v A-G for England and Wales* at [16]. An unlawful threat prima facie constitutes illegitimate pressure.

<sup>133</sup> Nicholas Seddon, *Cheshire & Fifoot's Law of Contract/ Cheshire & Fifoot's Law of Contract*, 9th ed (Chatswood, N.S.W.: LexisNexis Butterworths, 2008) at 708.

than solving the problems of the employer is one form of acting in bad faith.<sup>134</sup> For instance, where the employer simply states that he or she is unable to pay the original salary due to his or her financial difficulties, duress might not be found.<sup>135</sup> However, even if the employer was telling the truth about his or her financial situation, close attention must be paid to whether or not he or she was seeking to exploit the situation. Economic duress might still be found in such cases.

- 3.42 Where there is a threat involving lawful acts, it would be difficult to prove lawful act duress.<sup>136</sup> However, the threat and demand could be illegitimate where:
- 1) There was an improper motive;<sup>137</sup>
  - 2) The demand was unreasonable and unjustifiable;<sup>138</sup>
  - 3) The circumstances were so clearly disadvantageous to the FDW that it was unconscionable;<sup>139</sup> or
  - 4) The demand was made in bad faith, with a deliberate intention to conceal or lie about a fact.<sup>140</sup>

**(b) Threat and demand compelled FDW to accept the lower salary**

- 3.43 Once the FDW proves that the threat and demand was illegitimate, the employer must prove that the threat and demand did not cause the FDW to accept a lower salary.<sup>141</sup>
- 3.44 For economic duress to be found, it must be established that the FDW would not have agreed to the lower salary if not for the threat and demand.<sup>142</sup>
- 3.45 There are several factors that can be taken into account to prove that the threat or demand compelled the FDW to accept the lower salary: (i) whether the FDW protested, (ii) whether there were other reasonable alternatives, (iii) the seriousness of the consequences if the employment was terminated, (iv) whether the FDW had access to legal advice, and lastly, (v) whether the FDW took steps to void the contract after she is free from the employer's influence.<sup>143</sup>
- 3.46 Even if the FDW remained silent, economic duress can still be found where the FDW has no other practical alternatives but to agree to the demand.<sup>144</sup>
- 3.47 Depending on the circumstances, it might not always be suitable to rely on the doctrine of duress to render a contract voidable. This is especially if the threat was lawful. Elements such as there being a clear threat, and a causal connection between the threat and the FDW's compliance, might not always be made out. In such cases, the invocation of the doctrines of undue influence or unconscionability (especially the latter) may be more useful

---

<sup>134</sup> A.S. Burrows, *The Law of Restitution*, 2nd ed (United Kingdom: Butterworths, 2002) at 233.

<sup>135</sup> *Sharon Global Solutions v LG International ("Sharon Global")* [2001] 2 SLR(R) 233 at [45]. Where the "threat" is a legitimate notice of one's inability to perform, it would not be deemed an illegal threat.

<sup>136</sup> *E C Investments* at [47].

<sup>137</sup> *Tam Tak Chuen v Khairul bin Abdul Rahman and others ("Tam Tak Chuen")* [2009] 2 SLR(R) 240 at [57].

<sup>138</sup> *Tam Tak Chuen* at [57].

<sup>139</sup> *Tam Tak Chuen* at [59].

<sup>140</sup> *CTN Cash and Carry Ltd v Gallaher Ltd* [1994] 4 All ER 714 at 718.

<sup>141</sup> *E C Investments* at [48].

<sup>142</sup> *E C Investments* at [52].

<sup>143</sup> *Tam Tak Chuen* at [62].

<sup>144</sup> *Goh Bee Lan* at [19]. Illegitimate economic duress can be found even if the victim remains silent. When the victim has no other practical choice open to him but to submit to the pressure, then illegitimate pressure can be found even if the victim does not complain.

in rendering a contract voidable. In any event, all three doctrines can be argued simultaneously should the case go to court.

## ii. Undue Influence

- 3.48 Unlike duress, where the focus is the threat itself, undue influence focuses on the relationship of influence and power between the ascendant party and the weaker party. It covers a much broader scope of behaviour than duress – undue influence can be found so long as the stronger party exploits its influence over the weaker party to make the latter enter a transaction beneficial to the former.<sup>145</sup> Therefore, any behaviour that prevents the weaker party from exercising independent judgment, such as emotional manipulation or taking advantage of the weaker party’s ignorance, is relevant.
- 3.49 There are two “classes” of cases in undue influence that are relevant to FDWs: (i) actual undue influence and (ii) cases involving *de facto* relationships of ascendancy and reliance. These two classes of cases have different elements that need to be proven.

### (a) Actual undue influence

- 3.50 There are four elements that need to be proven: (i) the employer had the capacity to influence the FDW, (ii) the employer exercised that influence, (iii) the exercise of that influence was undue, and (iv) the exercise of that influence caused FDW to enter the contract.
- 3.51 The first two elements are quite easily proven in the case of FDWs. As for (iii), influence will generally be “undue” if there was some kind of unfair and improper conduct on the part of the stronger party.<sup>146</sup> Examples include:
- 1) Bullying the weaker party into agreeing through aggressive or abrasive behaviour;<sup>147</sup>
  - 2) Deliberately concealing or misstating information during the transaction;<sup>148</sup> or
  - 3) Emotional manipulation.<sup>149</sup>
- 3.52 For (iv), the influence exerted by the employer need not be the only reason why the FDW entered the transaction.<sup>150</sup> Therefore, even if the FDW considered other reasons, such as her own family’s financial situation, this would not eliminate the chances of a successful claim.

### (b) Proving *de facto* relationships of ascendancy and reliance

- 3.53 There are two elements that need to be proven for this category of cases. Firstly, the dynamic in such a relationship has to be unequal and imbalanced, such that the stronger party’s influence is likely to impair the weaker party’s judgment. The relationship between an FDW and their employer can constitute a relationship for undue influence. After all, a

---

<sup>145</sup> Mindy Chen-Wishart, *Contract Law* (Oxford University Press, 6th Ed, 2018) at 341.

<sup>146</sup> *Allcard v Skinner* (1887) 36 Ch D 145 (“*Allcard*”) at 181.

<sup>147</sup> *Bank of Credit v Aboody* [1990] 1 QB 923 (“*Aboody*”).

<sup>148</sup> *Pek Nam Kee v Peh Lam Kong* 1994] 2 SLR(R) 750 (“*Pek Nam Kee*”).

<sup>149</sup> *BOK v BOL* (“*BOK*”) [2017] SGHC 316.

<sup>150</sup> *UCB Corporate Services* [2002] EWCA Civ 555.

FDW is generally heavily dependent on her employer, who controls the conditions of her everyday life.

- 3.54 There also needs to be a “transaction that calls for explanation”. This is one where the substantive unfairness of the contract “cannot be reasonably accounted for on the ground of friendship, relationship, charity or other ordinary motives on which ordinary men act”.<sup>151</sup> Factors that can be taken into account to determine if the transaction is truly extraordinary include the magnitude and proportionality of disadvantage to the FDW,<sup>152</sup> and whether the transaction would be unreasonable given the FDW’s financial circumstances.
- 3.55 Once a relationship of ascendancy and reliance, *and* a transaction that “calls for explanation” is found, the FDW would be able to claim unless the employer proves that he or she did not influence the FDW.

### iii. Unconscionability

- 3.56 Compared to the other two doctrines discussed above, unconscionability is more focused on the unfair *terms of the contract* itself. Therefore, even if the FDW seemingly entered the contract through her own free will, as long as the terms within the contract are unfair or the contract in general leaves one party with an undervalue transaction, unconscionability might be invoked.
- 3.57 Unconscionability is still an uncertain doctrine in Singapore, as it has not seen much time in local courts. However, a recent High Court case has revived the doctrine and clarified its requirements. As such, it is not only relevant, but also presents a good opportunity to expand the possible claims against employers who engage in reprehensible behaviour.
- 3.58 There are two requirements to prove unconscionability:
- 1) Weakness on one side, including poverty, ignorance or other circumstances; and
  - 2) Exploitation, extortion or advantage taken of that weakness.<sup>153</sup>
- 3.59 The FDW would have a successful case once these two requirements are fulfilled, *unless* the employer can show that the transaction was fair, just and reasonable. The element of “weakness” has been construed fairly widely by the courts; in general, there should not be an issue with proving weakness on the part of the FDW. Therefore, only the element of exploitation will be discussed in this section.
- 3.60 To prove this element, it is necessary that there is a transaction at an undervalue.<sup>154</sup> This means that the FDW must have been paid a less than reasonable sum for the amount of work done. Overt unconscionable conduct must also be present on the part of the employer. This is *more* than just unequal bargaining power; the employer’s conduct must also be overreaching and extortionate. Unconscionable conduct needs to be *active*, i.e. the employer must act in his or her pursuit of the unfair term. Therefore, to prove that the employer was extortionate, the FDW might have to show that the employer had actively tried to convince and pressure the FDW into agreeing to a lower sum.

---

<sup>151</sup> *Allcard* at 662.

<sup>152</sup> *Credit Lyonnais Bank Nederland v Burch* [1997] 1 All ER 144.

<sup>153</sup> *BOK* at [120].

<sup>154</sup> *BOK* at [120].

#### iv. Misrepresentation

- 3.61 An action for misrepresentation may also be considered, especially where a verbal statement is not a term of the contract, but instead a statement of past or existing fact, which materially induced the FDW to enter into the employment contract.
- 3.62 There are three requirements that have to be proved in order to make out a claim for misrepresentation:
- 1) A statement of fact is made by one contracting party to another;
  - 2) That statement is in fact false;
  - 3) That statement materially induces the innocent party into entering the contract; and
  - 4) The innocent party suffered a loss or detriment as a result.

##### ***(a) A statement of fact is made by one contracting party to another***

- 3.63 Only a statement of fact can amount to an operative misrepresentation. A statement of fact must be distinguished from statements of intention, statements of opinion, as well as sales puff (i.e. advertising exaggerations).<sup>155</sup> Some of the relevant factors that determine what constitutes a state of fact include: the contracting parties' knowledge, relative positions of the contracting parties, the words used, and the nature of the subject matter of the contract.
- 3.64 It is also clear that the statement of fact has to be addressed to the party being misled.<sup>156</sup>

##### ***1. Distinguishing statements of fact from statements of opinion***

- 3.65 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.<sup>157</sup> An exception to this rule of thumb is where there is an imbalance in knowledge between the parties, which would allow the courts to imply a factual representation of reasonable grounds for such an opinion.<sup>158</sup>

##### ***2. Distinguishing statements of fact from statements of intention***

- 3.66 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. The exception to this general rule is where the person making the statement does not honestly hold the intention he or she is expressing, in which case there is a misrepresentation of fact in relation to the state of that person's mind.<sup>159</sup>

##### ***(b) The statement is in fact false***

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

---

<sup>155</sup> *Deutsche Bank AG v Chang Tse Wen* [2013] 1 SLR 1310.

<sup>156</sup> *Peek v Gurney* (1873) LR 6 HL 377.

<sup>157</sup> *Bisset v Wilkinson* [1927] AC 177.

<sup>158</sup> *Smith v Land & House Property Corporation* [1884] 28 Ch D 7.

<sup>159</sup> *Wales v Wadham* [1977] 1 WLR 199.

- 3.68 It should be noted that half-truths can amount to misrepresentation as well. A statement that is true, but omits material facts thereby creating a false impression misleading the client can constitute an operative misrepresentation.<sup>160</sup>
- 3.69 There is also 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.<sup>161</sup> 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.<sup>162</sup>
- 3.70 In some cases, an implied misrepresentation can be inferred from the employer's conduct.<sup>163</sup>

**(c) Material inducement**

- 3.71 An employer's false statement must have materially induced the FDW to enter the contract. The statement need not be the only inducement; it merely needs to be relevant to the contract.
- 3.72 There is inducement if the client:
- 1) Was aware of the statement;
  - 2) Did not know that the statement was untrue;
  - 3) Relied on the statement;<sup>164</sup> and
  - 4) 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.<sup>165</sup>

**(d) Loss or detriment**

- 3.73 An employer's false statement must also have caused the FDW to suffer loss or detriment, although this can usually be established if the FDW accepted a lower salary on basis of the contract entered into by misrepresentation.

**(e) Effect of misrepresentation on a contract**

- 3.74 It should be noted that unlike the other three doctrines mentioned above, a finding of misrepresentation will not necessarily mean that the contract is void. Depending on the type of misrepresentation that is made out, a finding of misrepresentation might allow for the rescission of the contract, in the absence of any bars to rescission.
- 3.75 There are three possible types of misrepresentation: (i) fraudulent misrepresentation, (ii) negligent misrepresentation, and (iii) innocent misrepresentation. In situations where FDWs sign contract for the payment of a lower salary than originally agreed, the most relevant types of misrepresentation will be fraudulent and negligent misrepresentation, which this section will focus on.

<sup>160</sup> *Dimmock v Hallett* [1866] 2 CH App 21.

<sup>161</sup> *With v O'Flanagan* [1936] Ch 575.

<sup>162</sup> *Trans-World (Aluminium) Ltd v Cornelder China* (Singapore) [2003] 3 SLR 501.

<sup>163</sup> *Spice Girls Ltd v Aprilla World Service BV* [2002] EMLR 27.

<sup>164</sup> *Leow Chin Hua v Ng Poh Buan* [2005] SGHC 39 at [8]-[9].

<sup>165</sup> *Jurong Town Corporation v Wishing Star Ltd* [2005] 3 SLR(R) 283.

## 1. Fraudulent misrepresentation

- 3.76 A fraudulent misrepresentation is the wilful making of a false statement with the intent that the other contracting party shall act in reliance upon it, with the result that they do so and suffer damage in consequence.<sup>166</sup>
- 3.77 To make out a claim for fraudulent misrepresentation, the false statement must have been made:
- 1) Knowingly;
  - 2) Without belief in its truth; or
  - 3) Recklessly, careless as to whether it be true or false.<sup>167</sup>
- 3.78 Where a fraudulent misrepresentation is proven, the client may: (i) rescind the contract and recover any money paid in reliance upon the misrepresentation; and (ii) claim all damages resulting from the misrepresentation.
- 3.79 In order to rescind the contract, the client must clearly and unequivocally communicate their decision to rescind the contract to the employer.<sup>168</sup> Communication of the rescission can be express or implied and can be by conduct. However, where possible, FDWs should try to document any proof of the conversation with their employer.<sup>169</sup>
- 3.80 Nevertheless, the affirmation of a contract is a bar to rescission.<sup>170</sup> Thus, where the client becomes aware of the misrepresentation, she should refrain from working under the terms of the second contract for lower salary. Where the client performs the contract by working despite learning about the employer's misrepresentation, her actions could be taken as an affirmation of the contract, which could bar rescission.
- 3.81 While it bears noting that there are other bars to rescission, these are unlikely to apply in the factual scenario where the client seeks to rescind a second contract providing for a lower salary.<sup>171</sup>
- 3.82 Rescinding the second contract providing for the payment of a lower salary would lead to the original contract signed between the FDW and the employer becoming the governing contract, and the employer should remunerate the FDW at the originally agreed rate.
- 3.83 In addition, damages for fraudulent misrepresentation can be claimed even if the contract has been rescinded. The award of damages for fraudulent misrepresentation aims to put the claimant in the position in which they would have been had the misrepresentation not been committed. The client can recover losses, which she could have avoided if the employer had been truthful, including direct and consequential losses<sup>172</sup> flowing from the misrepresentation.<sup>173</sup> 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.<sup>174</sup>

---

<sup>166</sup> *Kea Holdings Pte Ltd v Gan Boon Hock* [2000] 2 SLR(R) 333.

<sup>167</sup> *Derry v Peek* [1889] 14 App Cas 337.

<sup>168</sup> *Car & Universal Finance Co Ltd v Caldwell* [1965] 1 QB 525.

<sup>169</sup> This can be done by (i) voice recording the conversation; (ii) videoing the conversation; and (iii) ensuring the other party states their name and any other identifying information.

<sup>170</sup> *Long v Lloyd* [1958] 1 WLR 753.

<sup>171</sup> The other bars to rescission are: (i) where *restitution in integrum* is impossible; (ii) lapse of time; and (iii) where a third party's rights are involved.

<sup>172</sup> Direct damages are damages that result directly from the breach of contract, while consequential damages are losses that the parties would have reasonably expected to be the probable result of such a breach.

<sup>173</sup> *Wishing Star Ltd v Jurong Town Corporation* [2008] 2 SLR(R) 909 ("*Wishing Star*") at [21]-[26].

<sup>174</sup> *Wishing Star* at [28]

## 2. Negligent misrepresentation

- 3.84 The Misrepresentation Act<sup>175</sup> supplements the action of negligent misrepresentation under tort law.<sup>176</sup>
- 3.85 As per the statutory requirements, the plaintiff in an action for negligent misrepresentation must prove that:
- 1) They entered into the contract due to misrepresentation; and
  - 2) They suffered loss as a result.
- 3.86 Upon proof of these two requirements, the statute serves to reverse the burden of proof onto the defendant who, in this case, is the employer. The employer would have to prove that he or she had reasonable grounds to believe and did believe up to the time the contract was made that the facts represented were true.<sup>177</sup> Where the defendant fails to prove this, the statute provides that the defendant will be liable for damages.<sup>178</sup>
- 3.87 It should be noted that under the statutory regime, the court has the power to declare the contract as subsisting and award damages in lieu of rescission, if it is of the opinion that it would be equitable to do so.<sup>179</sup> Thus, an action under statutory negligent misrepresentation might lead only to damages for the FDW and might not result in the rescission of the second contract providing for a lower salary.

---

<sup>175</sup> Misrepresentation Act (Cap 390, 1994 Rev Ed) ("Misrepresentation Act").

<sup>176</sup> *Hedley Byrne & Co Ltd v Heller & Partners Ltd* [1964] AC 465.

<sup>177</sup> Misrepresentation Act s 2(1).

<sup>178</sup> While there remains debate over the measure of damages payable, the Singapore Court of Appeal in *RBC Properties Pte Ltd v Defu Furniture Pte Ltd* [2015] 1 SLR 997 at [84] that the measure of damages should be the negligent measure, and not the fraudulent measure.

<sup>179</sup> The court will have regard to factors such as the nature of the misrepresentation, the loss that would be caused by the misrepresentation if the contract were upheld, and the loss that rescission would cause to the other party.

## 4. OTHER BREACHES OF THE EMPLOYMENT CONTRACT

- 4.1 The following section examines other potential breaches of the employment contract, the causes of action that such breaches could give rise to, as well as available remedies.
- 4.2 The basis of the employer-employee relationship is contractual and thus, the general principles of the law of contract apply to a contract of employment. As in the case of any other contract, the express terms of an employment contract are to be ascertained from the exchange of correspondence or statements. In the context of FDWs, such terms of the contract will usually be found in their employment contract with their employer.<sup>180</sup>
- 4.3 A contract of employment may be terminated by repudiation of the said contract by the employer or employee, if the repudiatory breach is a sufficiently serious one. Where there is wrongful dismissal of the FDW or oppressive work conditions contrary to the terms of the contract, repudiatory breach will be on the part of the employer.

### I. Wrongful dismissal

- 4.4 Where the employer dismisses an FDW in breach of the terms of the employment contract that relate to termination, a claim for wrongful dismissal may be brought. It should also be noted that a resignation of the employee that was extracted by force by the employer amounts to wrongful summary dismissal as well.

#### A. Damages for wrongful dismissal

- 4.5 Where a claim for wrongful dismissal is made out, the FDW will be entitled to claim damages for wrongful dismissal arising from the repudiation of the employment contract, but this is usually limited to the sums due under the terms of the employment agreement, and would not include additional compensation.<sup>181</sup> The quantum of damages is normally ascertained by calculating the amount the FDW would have earned under the contract of employment for the period of its lawful termination.<sup>182</sup> For example, if Clause 18 of the employment contract (in Appendix 4) provides that seven days' notice must be given to the FDW for lawful termination, the measure of damages for wrongful dismissal will generally be equal to the FDW's salary for seven days.
- 4.6 In addition, dismissal of the FDW by her employer without complying with the procedure set out in the employment contract will make the employer liable in damages for such wrongful dismissal of the further amount of salary for the duration that it would have taken to follow the proper procedure.<sup>183</sup>
- 4.7 Given that most employment contracts for FDWs provide that the employer is to bear the cost of repatriating the FDW in the event of her dismissal,<sup>184</sup> this cost should be recoverable where the FDW was made to pay for her airplane ticket home after her wrongful dismissal.

---

<sup>180</sup> See Appendix 4 for a sample of an employment contract between employer and FDW.

<sup>181</sup> *Wee Kim San Lawrence Bernard v Robinson & Co (Singapore) Pte Ltd* [2014] 4 SLR 357.

<sup>182</sup> *Addis v Gramophone Co Ltd* [1909] AC 488.

<sup>183</sup> *Aldabe Fermin v Standard Chartered Bank* [2010] 3 SLR 722.

<sup>184</sup> See Appendix 4, Clause 21.

## II. Oppressive work conditions

### A. Heads of claim

#### i. Breach of contract

- 4.8 Where the employment contract between the employer and the FDW contains terms as to the work conditions that have to be provided for the FDW, a failure to comply with those terms could give rise to a claim for breach of employment contract. For example, an employment contract might contain terms relating to the adequate rest and adequate food that the employer has to provide for the FDW.<sup>185</sup>
- 4.9 Even where the employment contract between the employer and the FDW does not provide specifically for the working conditions of the FDW, it might be possible to argue that there is an implied term in the employment contract to the same effect,<sup>186</sup> and that such a term has been breached.

#### ii. Constructive dismissal

- 4.10 In the event that the terms ensuring a proper and safe working environment in the employment contract are not complied with, the FDW might bring a claim for constructive dismissal if she chooses to leave her employment.
- 4.11 The elements to make out an action in constructive dismissal are:<sup>187</sup>
- 1) The employer committed a repudiatory breach of the employment agreement;
  - 2) The employee must have accepted the repudiatory breach; and
  - 3) The repudiatory breach must have caused the employee to leave her employment.
- 4.12 Arguably, any failure to ensure the health and safety of the FDW as provided for in numerous terms of the employment contract would constitute a repudiatory breach of the contract by the employer. In such circumstances, the FDW may accept the breach by the employer and leave her employment.

### B. Remedies for oppressive work conditions

#### i. Damages

- 4.13 Damages are claimable as of right in every case involving the breach of a contractual obligation,<sup>188</sup> and this is clearly independent of whether the breach entitles the innocent party to terminate the contract.
- 4.14 Therefore, where there is a term in the employment contract specifying the number of hours of rest the FDW should get, or the number of meals she should be provided with, the breach of such terms will result in an obligation to pay damages on the part of the employer.

---

<sup>185</sup> See Appendix 4, Clause 11 in relation to the provision of adequate rest. See Appendix 4, Clause 10 in relation to the provision of adequate food.

<sup>186</sup> It might be argued that there is an implied term in law in employment contracts between employers and FDWs that safe working conditions are to be provided, or that adequate rest and food will be given to the FDW.

<sup>187</sup> *Cheah Peng Hock v Luzhou Bio-Chem Technology Limited* [2013] 2 SLR 577 at [35].

<sup>188</sup> *RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd* [2007] 4 SLR(R) 413 at [40].

## 5. TORTS COMMITTED AGAINST FOREIGN DOMESTIC WORKERS

- 5.1 A tort is a civil wrong. This means that the wrong transgresses private as opposed to public (such as criminal) law, and the focus is on the wrongs committed against persons rather than society in general.<sup>189</sup>
- 5.2 A tort is, therefore, a breach of a duty that person A owes towards person B, for which person A is legally liable. Unlike contract law, tort law is not based on *consent to certain duties and terms* – the content of a tort is decided by the courts. Tort law can thus help FDWs get compensation outside of the confines of their contract.
- 5.3 This section looks at the tortious claims that can be made in four common situations: (i) when the FDW is injured due to an accident; (ii) when the FDW is physically and verbally abused, as well as confined; (iii) when the FDW is harassed; and (iv) when the employer makes a false police report or complaint against the FDW. The fifth and final part of this section looks at the damages available for tortious claims.

### I. Accident causing injury

#### A. Tort of negligence

- 5.4 If an FDW sustains injuries at work, she might have a claim against her employer under the common law tort of negligence. Damages under common law would include compensation for pain and suffering, loss of wages, medical expenses and any future loss of earnings. Even if the FDW partially contributed to her injury (known as “contributory negligence” in law) she may still be able to bring a claim and get substantial compensation if her contribution to the injury was minor. Section 3(1) of the Contributory Negligence and Personal Injuries Act<sup>190</sup> states that where a person:

“suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage shall *not be defeated by reason of the fault of the person suffering the damage*, but the damages recoverable...shall be reduced to such an extent as the court thinks just and equitable having regard to the claimant’s share in the responsibility of the damage.”

- 5.5 Therefore, while the damages ordered may be reduced due to the FDW’s own negligence, the employer will still be held liable if his or her negligence also contributed to the injury. Even if the FDW had a greater hand in her injury, her employer would still have to pay for the percentage of damage he or she caused.<sup>191</sup>

#### i. Elements of a negligence claim

- 5.6 To prove the negligence of her employer, the following elements must be established:
  - 1) Duty of care owed by the employer to the FDW;
  - 2) Breach of the duty of care by the employer; and
  - 3) Breach of duty must have caused loss to the FDW.

---

<sup>189</sup> Gary Chan, *The Law of Torts in Singapore* (Academy Publishing, 2nd Ed, 2016) (“*The Law of Torts*”) at p 1.

<sup>190</sup> Contributory Negligence and Personal Injuries Act (Cap 54, 2002 Rev Ed).

<sup>191</sup> In *Ng Weng Cheong v Soh Oh Loo & Anor* [1993] 1 SLR(R) 532 at [42] to [45], it was held that the plaintiff’s own negligence had contributed to 70% of his injury. The defendant, however, still had to compensate the plaintiff for the remaining 30% he caused.

**(a) Duty of care owed by the employer**

- 5.7 First, the FDW must show that her employer owed her a duty of care. A duty of care is a legal obligation to ensure the safety and well-being of others.
- 5.8 Establishing a duty of care should not be too difficult for the FDW: in general, employers owe their employees a duty of care *both* at common law<sup>192</sup> and by statute.<sup>193</sup> The gist of both duties is that the employer must take reasonable care of the safety of their FDW. This not only encompasses providing a safe environment for the FDW to *work* in, but also providing adequate food, access to medical treatment, and acceptable accommodation for the FDWs they hire, which is are mandated by law.<sup>194</sup> Essentially, it is the employer's duty to provide safe working conditions and to ensure that the FDW carries out her tasks in accordance with safe work practices. This obligation is owed before, during, and after employment, for as long as the worker remains in Singapore.

**(b) Breach of duty of care**

- 5.9 Upon establishing that the employer does owe a duty of care to her, the FDW must also:
- 1) Prove that the employer breached his/her duty of care by failing to conform to the required standard of conduct;
  - 2) Establish that her employer's negligence *caused* her injury; and
  - 3) Prove that she *did* suffer injury.
- 5.10 The battle primarily lies in what constitutes a "reasonable" standard of care when it comes to domestic work, and whether the employer breached this standard.
- 5.11 The Employment of Foreign Manpower (Work Passes) Regulations<sup>195</sup> ("EFMR") states in s 2 of its Fourth Schedule that the employer shall provide "safe working conditions" and "take such measures as are necessary to ensure the safety and health of the foreign employee at work". It also includes specific safety regulations for the cleaning of windows.
- 5.12 Section 3 of the same schedule further states that the employer shall ensure that the FDW acts in a manner that is in accordance with the work practices stipulated in MOM's training courses and relevant safety and training materials (it is mandatory for first-time FDW employers to attend the Employer's Orientation Programme).<sup>196</sup> A "reasonable" standard of care may thus be derived from these statutory documents.
- 5.13 In addition, the court might also use these factors to determine a standard of care:
- 1) Foreseeability of the harm at the time of the event;<sup>197</sup>
  - 2) Seriousness or gravity of the harm;<sup>198</sup>

---

<sup>192</sup> *Chandran a/l Subbiah v Dockers Marine Pte Ltd* [2010] 1 SLR 786 at [15].

<sup>193</sup> See Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed Sing) s 12(1).

<sup>194</sup> See EFMR Fourth Schedule Para 1.

<sup>195</sup> MOM website, "Employers' Orientation Programme (EOP)" <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/employers-orientation-programme-eop>> (accessed 5 September 2018).

<sup>196</sup> MOM website, "Employers' Orientation Programme (EOP)" <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/eligibility-and-requirements/employers-orientation-programme-eop>> (accessed 5 September 2018).

<sup>197</sup> *Bolton v Stone* [1951] 1 All ER 1078 at 863 and 867.

<sup>198</sup> *Paris v Stepney Borough Council* [1951] AC 367 at 375.

- 3) The practicability of avoiding or minimising the risk (e.g. the ease or cost of avoiding harm);<sup>199</sup> and
  - 4) How commonsensical it was for the FDW to have protected herself.<sup>200</sup>
- 5.14 Past breaches of the standard of care include: instructing the FDW to stand on a glass ceiling to clean it,<sup>201</sup> and not providing the FDW with extendable window wipers and not instructing the FDW on how to safely clean windows.<sup>202</sup>

## ii. Non-delegable duty

- 5.15 In situations where the FDW does not live in the same household as her employer or is under the direct care of a third-party during the course of her employment, the employer may plead ignorance of such a breach of duty in an attempt to avoid liability for a third party's actions or lack thereof.
- 5.16 The employer, however, remains liable for the breach of duty if it can be proven that:
- 1) A non-delegable duty ("NDD") is imposed by a statute; or
  - 2) An NDD is imposed by common law.<sup>203</sup>
- 5.17 An NDD is a direct primary duty owed by the employer to the FDW, notwithstanding that the employer was not at fault. For example, an employer who works abroad and arranges for the FDW to look after his elderly parents in Singapore would be unable to absolve himself from the NDD to provide adequate food, access to medical treatment, and acceptable accommodation for the FDW by suggesting that he had delegated the responsibility to his parents.

### (a) Statutory NDD

- 5.18 A statute can give rise to a non-delegable duty in tort and whether a particular statute does so is a question of interpretation.<sup>204</sup> In Chapter One, the laws relevant to the employment of FDWs were discussed. The primary pieces of legislation that could give rise to an NDD in tort are the EFMA and the EFMR.
- 5.19 In a recent judgment by the Court of Appeal in Singapore, it was acknowledged that the employer bears a "broad and uncompromising duty" to provide for the upkeep and maintenance of his foreign employees to the extent required by the EMFA and EFMR.<sup>205</sup> In the context of the case, the court was specifically concerned with the obligation on an employer to pay for his employee's medical expenses and to provide his employee with

<sup>199</sup> *Latimer v AEC Ltd* [1952] 2 QB 701 at 709, *Overseas Tankship (UK) Ltd v. The Miller Steamship Co (The Wagon Mound No. 2)* [1967] 1 AC 617 at 643-644.

<sup>200</sup> *Qualcast (Wolverhampton) Ltd v Haynes* [1959] AC 743 at 754.

<sup>201</sup> MOM website, "Employer charged for failing to ensure safety of foreign domestic worker" <<http://www.mom.gov.sg/newsroom/press-releases/2018/0517-employer-charged-for-failing-to-ensure-safety-of-fdw>> (accessed 5 September 2018).

<sup>202</sup> MOM website, "Employer Fined \$5,000 For Failing to Ensure Safety of Foreign Domestic Worker" <<http://www.mom.gov.sg/newsroom/press-releases/2012/employer-fined-5000-for-failing-to-ensure-safety-of-foreign-domestic-worker>> (accessed 5 September 2018).

<sup>203</sup> *Management Corporation Strata Title Plan No 3322 v Tiong Aik Construction Pte Ltd and another* [2016] 4 SLR 521 ("*Tiong Aik Construction*") at [14].

<sup>204</sup> *Tiong Aik Construction* at [28].

<sup>205</sup> *Minichit Bunhom v Jazali bin Kastari and another* [2018] 1 SLR 1037 at [89].

medical insurance, even if such expenses were occasioned by a third party tort.<sup>206</sup> This alludes to the possibility that the legislative framework of employer responsibilities under the EFMA are unambiguous and non-delegable.

5.20 A purposive interpretation<sup>207</sup> of the statute could also lead to such a conclusion. In construing the EFMA, it should be considered that the EFMA was enacted to prescribe the responsibilities and obligations of employers pertaining to the employment of foreign workers in Singapore. The Fourth Schedule of the EFMR states clearly the scope and standard of duties of the employer in safeguarding his employee’s health and well-being.

**(b) Common Law NDD**

5.21 The client must prove that the facts of the case fall within one of the established categories of non-delegable duties or satisfy the five features espoused in the case of *Woodland v Swimming Teachers Association* [2013] WLR 1227 (“*Woodland*”).<sup>208</sup>

*1. Established Category – Employee Safety*

5.22 In Singapore, a non-delegable duty pertaining to employee safety has been established. An employer has a non-delegable duty to take reasonable care in providing a safe system of work for his employees.

5.23 Therefore, if an FDW has suffered an injury due to her employer’s failure to provide a proper working environment, the employer is unable to escape liability by asserting that a third party was negligent and responsible for her injury.

*2. Woodland Features*

5.24 To demonstrate that an NDD arises on a particular set of facts, the FDW must minimally be able to prove that the facts of the case satisfy the five features espoused in *Woodland*.<sup>209</sup>

**Table 5: Features and Application of *Woodland***<sup>210</sup>

Features	General Application
The claimant is especially vulnerable or dependent on the protection of the defendant against the risk of injury.	An FDW is especially vulnerable. Living in her employer’s home, she is wholly dependent on the employer for the provision of basic amenities.

<sup>206</sup> See Part III of the Fourth Schedule to EFMR, which provides that the employer is responsible for and must bear the costs of the foreign employee’s upkeep and maintenance in Singapore.

<sup>207</sup> The concept of the purposive approach was described by Lord Griffiths in *Pepper v Hart* [1992] 3 WLR 1032 at p 617 - to give effect to the true purpose of legislation and to be prepared to look at extraneous materials that bear upon the background against which the legislation was enacted. Section 9A of the Interpretation Act (Cap 1, 2002 Rev Ed) mandates that a purposive approach should be adopted in the construction of all statutory provisions.

<sup>208</sup> *Woodland v Swimming Teachers Association* [2013] WLR 1227 (“*Woodland*”) at [62].

<sup>209</sup> *Woodland*.

<sup>210</sup> *Woodland*.

Features	General Application
<p>There is an antecedent relationship between the claimant and the defendant (independent of the negligent act or omission):</p> <ol style="list-style-type: none"> <li>1) Which places the claimant in the custody, care or charge of the defendant; and</li> <li>2) From which one can impute to the defendant the assumption of a positive duty to protect the claimant from harm.</li> </ol>	<p>An FDW-Employer relationship is one in which the FDW is under the care of her employer and from which the employer has positive duties that are statutorily imposed on him.</p>
<p>The claimant has no control over whether the defendant performs his obligations personally or through employees or third parties.</p>	<p>An FDW has no control over her employer's actions.</p>
<p>The defendant has delegated to a third party a function which is an integral part of the positive duty and the third party is exercising the defendant's custody and care of and control over the defendant.</p>	<p>This is dependent on the factual matrix of each case.</p>
<p>The third party has been negligent in the performance of the very function delegated to him and not just in some collateral respect.</p>	<p>This is dependent on the factual matrix of each case.</p>

5.24 The court would also have to take into account the fairness and reasonableness of imposing an NDD in the particular circumstance as well as relevant policy considerations in our local context.

5.25 Keeping in line with Singapore's strong stance against mistreatment of FDWs, there are cogent policy arguments for the imposition of an NDD on employers of FDWs, especially in relation to the provision of safe working conditions<sup>211</sup> and the responsibility of the FDW's upkeep and maintenance.<sup>212</sup>

### **B. Breach of statutory duty**

5.26 The breach of statutory duty is an independent and separate cause of action from the tort of negligence. The FDW may raise a cause of action for breach of statutory duty concurrently with the tort of negligence.<sup>213</sup>

<sup>211</sup> Condition 1 of Part I of the Fourth Schedule to EFMR.

<sup>212</sup> The Singapore government has made strong efforts to safeguard the well-being of migrant workers in Singapore and in recent years worked towards providing additional protection for FDWs through their support of NGOs and the implementation of new policies such as the mandatory Employer's Orientation Programme and the weekly rest day policy. See United Nations, Human Rights Council, *Singapore Universal Periodic Review Report* (2015) at para 85 and 90-93.

<sup>213</sup> *The Law of Torts* at p 373.

- 5.27 To establish a breach of statutory duty, the FDW has to show that:<sup>214</sup>
- 1) The statutory duty was imposed for the protection of a limited class of the public; and
  - 2) Singapore Parliament intended to confer on that class a private right of action for a breach of statutory duty.
- 5.28 The employment of foreign workers in Singapore is governed by, *inter alia*, the EFMA and the relevant regulations such as the EFMR. Both the EFMA and EFMR prescribe the responsibilities and obligations of employers of foreign employees in Singapore.
- i. Responsibilities and Obligations of Employers of Foreign Domestic Workers under Employment of Foreign Manpower Act and Employment of Foreign Manpower Regulations**
- 5.29 To ensure the well-being of FDWs in Singapore, requirements are imposed on employers under the Work Pass Conditions. The following table illustrates the key areas that an employer of an FDW would owe responsibilities to his employee and the relevant statutory provision under the EFMR that provides for it.

**Table 6: Key areas of responsibility**

Key Area of Employment	Responsibilities of Employers	Statutory Provision
Medical Treatment and Insurance	Employers are responsible for the cost of medical care of the FDW. Employers are obligated to purchase and maintain medical insurance of at least S\$15,000 per worker per year.	Section 1 of Part I of the Fourth Schedule – EFMR  Section 8 of Part 1 of the Fourth Schedule – EFMR  Section 4 of Part II of the Fourth Schedule – EFMR
Acceptable accommodation	Employers are required to ensure that their FDWs have acceptable accommodation. Acceptable accommodation is defined as housing that meets the various statutory provisions.	Section 4 of Part I of the Fourth Schedule – EFMR

<sup>214</sup> *The Law of Torts* at p 375-376.

Key Area of Employment	Responsibilities of Employers	Statutory Provision
	<p>MOM has clarified that the following requirements have to be met to constitute as acceptable accommodation:<sup>215</sup></p> <p><b>Adequate shelter:</b> The accommodation must adequately protect the FDW from environmental elements such as sun, rain or strong winds.</p> <p><b>Basic amenities:</b> The FDW must minimally be provided with a mattress, pillow, blanket, bathroom amenities and toiletries. Examples of toiletries include soap, shampoo, toothbrush, toothpaste, etc.</p> <p><b>Sufficient ventilation:</b> The FDW's accommodation must be sufficiently ventilated. Mechanical ventilation (e.g. electrical fan) must be provided if natural ventilation is inadequate.</p> <p><b>Safety:</b> The FDW must not sleep near any dangerous equipment or structure that could potentially cause harm or hurt to her.</p> <p><b>Modesty:</b> The FDW must not sleep in the same room as a male adult or teenager. An FDW must be informed of any video recording devices at home which must not be installed in areas that will compromise her privacy or modesty, e.g. where she sleeps, change clothes, or the bathroom area.</p> <p><b>Space and privacy:</b> The FDW must be provided with a separate room or accommodation that has adequate space and privacy.</p>	
Rest Days	Employers are required to provide their FDW with a weekly rest day. Compensation must be given to the FDW if both parties mutually agreed on an	Section 10 of Part I of the Fourth Schedule – EFMR

<sup>215</sup> MOM website, "Rest days and well-being" <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/employers-guide/rest-days-and-well-being>> (accessed 20 July 2018).

Key Area of Employment	Responsibilities of Employers	Statutory Provision
	arrangement for the FDW to work on her rest day.	<p>Section 12 of Part I of the Fourth Schedule – EFMR</p> <p>Section 13 of Part I of the Fourth Schedule – EFMR</p> <p>Section 14 of Part I of the Fourth Schedule – EFMR</p>
Adequate Food	<p>Employers are obligated to provide their FDWs with adequate food. MOM has specified adequate food to constitute at least 3 meals a day similar to the following diet:<sup>216</sup></p> <p><b>Breakfast:</b> 4 slices of bread with spread</p> <p><b>Lunch:</b> 1 bowl of rice + three-quarter cup of cooked vegetables + palm-sized amount of meat (fish/poultry/beef/lamb) + fruit</p> <p><b>Dinner:</b> 1 bowl of rice + three-quarter cup of cooked vegetables + palm-sized amount of meat (fish/poultry/beef/lamb) + fruit</p>	Section 1 of Part I of the Fourth Schedule – EFMR
Safe Working Environment	<p>Employers must provide safe working conditions for their FDWs and ensure that duties are performed according to safe work practices stipulated by MOM in its training course and safety materials.</p> <p>For example, employers must not allow their FDWs to clean the exteriors of windows in the absence of the supervision of an adult representative or when window grilles are uninstalled or unlocked.</p>	Section 2 of Part 1 of the Fourth Schedule – EFMR

<sup>216</sup> MOM website, “Rest days and well-being” <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/employers-guide/rest-days-and-well-being>> (accessed 20 July 2018).

## ii. Civil remedies under the Employment of Foreign Manpower Act

- 5.30 Section 29 of the EFMA seems to suggest that a breach of any statutory regulations under the EFMR would be classified as an offence that would attract criminal penalties since it provides that the regulations may prescribe penalties for contravention of said regulations. Where an offence has been committed, it is a matter of prosecutorial discretion dependent on the circumstances whether the case will proceed under the EFMA or if the employer will be charged under the Penal Code. However, both the EFMA and EFMR do not expressly allow nor prohibit civil claims.
- 5.31 The issue of liability arising from a breach of statutory duty (“BOSD”) has not been directly addressed by court decisions nor parliamentary debates and therefore, it remains to be seen whether a private right of action may arise for a breach of statutory duty under the EFMR, i.e., whether civil liability will be imposed on the employer in the event of a breach under the EFMR.
- 5.32 Generally, the existence of criminal liability militates against the finding that Parliament intended to confer a civil remedy under the Act.<sup>217</sup> However, a private right of action may exist if the following two elements laid out in *X (Minors)*<sup>218</sup> can be proven:
- 1) The statutory duty was imposed for the protection of a limited class of the public; and
  - 2) Parliament intended to confer on that class a private right of action for a breach of statutory duty.<sup>219</sup>
- 5.33 In the recent case of *Dafu Zhang*,<sup>220</sup> the issue of whether a private right of action exists for a breach of a duty under s 25(6)(g) of the EFMA was discussed. Section 25(4) of the EFMA provides for financial penalties on the employer for a breach of a duty under s 25(6)(g) but it was unclear whether a private right of action exists for the foreign employee.
- 5.34 It was held that the duty to bear the foreign employee’s repatriation costs may reasonably be regarded as having been imposed on the employer by the EFMA for the benefit of the protection of foreign employees in Singapore.<sup>221</sup> In that regard, it is arguable that the EFMA confers a private right of action on aggrieved foreign employees for the recovery of their repatriation costs.<sup>222</sup> The plaintiff in that case would have likely succeeded in a claim for a BOSD under s 25(6)(g) of the EFMA had he pleaded it in his statements.<sup>223</sup>
- 5.35 Therefore, a theoretical right of private action for BOSD under the EFMA and EFMR exists as it may be proven that there is a legislative intent for FDWs to be conferred the right to sue for a BOSD against her employer under the relevant provisions of the EFMA and EFMR despite the imposition of criminal or financial penalties on the employer for the breach.
- 5.36 In Singapore, claims for breach of statutory provisions and regulations are more commonly raised under the tort of negligence. Statutory duties may instead, form the backdrop of finding the existence of a common law duty of care in establishing negligence.<sup>224</sup>

---

<sup>217</sup> *Lonrho v Shell Petroleum Co Ltd (No 2)* [1982] AC 173, applied in *Management Corporation Strata Title Plan No 586 v Menezes Ignatius Augustine* [1992] 1 SLR(R) 201 at [12]-[13].

<sup>218</sup> *X (Minors) v Bedfordshire County Council (“X (Minors)”)* [1995] 2 AC 633 (“*X (Minors)*”).

<sup>219</sup> *X (Minors)* at 731.

<sup>220</sup> *Dafu Zhang v Virtu Financial Global Services Singapore Pte. Ltd. and Virtu Financial Singapore Pte. Ltd.* [2018] SGMC 26 (*Dafu Zhang*’).

<sup>221</sup> *Dafu Zhang* at [19].

<sup>222</sup> *Dafu Zhang* at [19].

<sup>223</sup> *Dafu Zhang* at [20].

<sup>224</sup> *Animal Concerns Research & Education Society v Tan Boon Kwee* [2011] 2 SLR 146 at [22].

## II. Intentional acts causing injury

- 5.37 In cases where an FDW has suffered physical abuse or sexual assault,<sup>225</sup> the FDW can pursue claims under the torts of battery, assault (both psychological and physical) and false imprisonment. This would allow her to gain monetary compensation apart from making a police report. The torts of battery, assault and false imprisonment are actionable *per se*, which means that the FDW is not required to prove the harm she suffered in order to establish a claim in these torts.<sup>226</sup> It suffices that the tortious event happened.
- 5.38 Although there have been no reported civil claims for injuries suffered as a result of physical abuse and sexual assault<sup>227</sup> in Singapore, civil claims founded on international torts have been brought in other jurisdictions. As a matter of law, similar claims can be brought before the Singapore courts.

### A. Action for battery

- 5.39 Battery is a tort rooted in forceful and unwanted physical contact. Claims of battery can be made for cases of physical or sexual abuse.

#### i. Elements

- 5.40 There are three elements that must be made out to establish a successful claim of battery: (i) direct physical contact with the FDW, (ii) intentional physical contact with the FDW, and (iii) unjustified physical contact.<sup>228</sup>

#### **(a) Direct physical contact with the FDW**

- 5.41 The FDW must prove that the physical contact between the employer and the defendant was directly caused by the employer. Direct physical contact includes the scenario in which the employer uses an instrument or weapon<sup>229</sup> to inflict the blow. For instance, it is likely that direct physical contact would be found where the employer carries out acts such as: throwing water in the FDW's face,<sup>230</sup> spitting in the FDW's face,<sup>231</sup> or where the employer uses a broom to hit the FDW.

#### **(b) Intention**

- 5.42 The FDW must prove that her employer intended the consequences of his or her act, namely, the physical contact with the FDW. However, it is not necessary for the employer to intend to cause the FDW any harm,<sup>232</sup> given that battery is actionable *per se*.

---

<sup>225</sup> Sexual abuse can include (i) any unwanted sexual touching, stroking, kissing, groping, etc.; (ii) unwanted sexual requests, messages or gestures, including electronically, in the workplace or elsewhere; (iii) being made to view pornography against your will and; (iv) unwanted taking and/or sharing of nude or intimate photographs or videos, e.g. upskirting. See <http://sacc.aware.org.sg/get-information/what-is-sexual-assault/>.

<sup>226</sup> *The Law of Torts* at p 35.

<sup>227</sup> No definition of sexual abuse for civil claims has been pronounced by the Singapore Courts. However, sexual assault has been defined under the Penal Code (Cap 224, 2008 Rev Ed Sing) ("Penal Code") under s 376. Sexual abuse includes any penetration without consent (e.g. vaginal, oral or anal), using any part of the body (penis, fingers) or object.

<sup>228</sup> *The Law of Torts* at p 39.

<sup>229</sup> *Fagan v Commissioner of Metropolitan Police* [1968] 3 WLR 1120 at 1125 – 1126. Battery was found although there was no physical contact between the defendant and the plaintiff. The defendant had driven his car on the police constable's foot.

<sup>230</sup> *Hopper v Reeve* (1817) 129 ER 278.

<sup>231</sup> *R v Cotesworth* (1704) 6 Mod Rep 172.

<sup>232</sup> *Wilson v Pringle* [1987] QB 237 at 249.

**(c) Unjustified physical contact**

- 5.43 The FDW must prove that the physical contact was unjustified. Where the conduct of the employer is not ordinarily acceptable in daily life, battery would be found.<sup>233</sup> Instances of physical and sexual abuse would clearly constitute such conduct.

**B. Action for assault**

- 5.44 Compared to battery, which involves the actual application of force, assault involves the threat of force on the FDW. Apart from actions, words alone (e.g. "I'm going to slap you") may constitute assault.<sup>234</sup> Battery is often accompanied by assault, but pure verbal abuse can also result in a successful claim for assault.

**i. Elements**

- 5.45 There are two elements to an action for assault: (i) the FDW must reasonably apprehend the imminent infliction of battery, and (ii) the employer must intend for the FDW to have reasonable apprehension of battery, without lawful excuse or justification.<sup>235</sup>

**(a) Reasonable apprehension of imminent battery**

- 5.46 The test of "reasonable apprehension" is essentially whether a reasonable person in the shoes of the FDW would have apprehended or expected imminent battery or force in the circumstances of the particular case.<sup>236</sup> A violent gesture by the employer, such as a clenched fist, is likely to invite the inference that there was reasonable apprehension on the part of the FDW.<sup>237</sup>
- 5.47 The threat of battery also has to be imminent. Physical proximity, and the possibility of the employer carrying out his or her threat immediately, would thus be relevant.<sup>238</sup>
- 5.48 It bears emphasizing that no direct contact between the employer and FDW need happen before assault can be found. In *Stephens v Myers*,<sup>239</sup> the defendant's threatening advance towards the plaintiff with a clenched fist amounted to an assault, notwithstanding the fact that he was stopped by third parties from making physical contact with the plaintiff, and was not sufficiently near the plaintiff for the blow to take effect.

**(b) Intention**

- 5.49 The FDW must also prove that the employer intended for the FDW to apprehend imminent battery. Thus, even if the employer's act causes the FDW to reasonably apprehend the immediate infliction of force, the claim fails if the employer had no intention.

---

<sup>233</sup> *Goel Adesh Kumar v Resorts World at Sentosa Pte Ltd* [2015] SGHC 289 ("*Goel Adesh Kumar*") at [23]. See also, *Collins v Wilcock* [1984] 1 WLR 1172 at 1177.

<sup>234</sup> *Tuberville v Savage* (1669) 86 ER 684 ("*Tuberville*").

<sup>235</sup> *Goel Adesh Kumar* at [23].

<sup>236</sup> *The Law of Torts* at p 43.

<sup>237</sup> *Stephens v Myers* (1830) 172 ER 735 ("*Stephens v Myers*").

<sup>238</sup> *Amutha Valli d/o Krishnan v Titular Superior of the Redemptorist Fathers in Singapore & Ors* [2009] 2 SLR(R) 1091 at [76] ("*Amutha Valli*").

<sup>239</sup> *Stephens v Myers*.

- 5.50 Words may negative an assault where they indicate that the threat of force would not be carried out.<sup>240</sup> For instance, if the employer were to say to the FDW, “I would kill you if I wouldn’t go to jail for that”, intention might not be found. This is because the employer would indeed go to jail if he or she were to kill the FDW, and the employer’s declaration expressly states that he or she would not and did not intent to commit the act.

### **C. Action for false imprisonment**

- 5.24 False imprisonment occurs when a person’s freedom of movement is totally restrained without lawful excuse or justification.<sup>241</sup> If the FDW was confined or locked in a space in the course of her employment, she could consider pursuing a claim in false imprisonment.

#### **i. Elements**

- 5.25 There are three elements to an action in false imprisonment: (i) the employer’s act must directly cause the FDW’s imprisonment, (ii) the employer must intentionally cause the imprisonment, and (iii) there must be total imprisonment.

##### **(a) Directly causing the plaintiff’s imprisonment**

- 5.26 The act of the employer must directly result in the FDW’s imprisonment.<sup>242</sup> An employer can be found to have directly resulted in the FDW’s imprisonment even where the employer had instructed a third party to imprison the FDW.<sup>243</sup>

##### **(b) Intention**

- 5.27 The FDW must prove that the employer intended by his or her act to cause the confinement to the FDW.<sup>244</sup> An intention to merely commit the act without any awareness of the consequences is unlikely to be sufficient to satisfy the requirement, e.g. locking the door without knowing someone was confined inside the room.

##### **(c) Total imprisonment**

- 5.28 There must be confinement or restraint within a particular area delimited by the employer. The restraint of the FDW must be total, not merely partial.<sup>245</sup> There would be no total imprisonment if there was, for example, a reasonable alternative exit.<sup>246</sup>
- 5.29 Awareness of restraint is not required to make out a claim for false imprisonment.<sup>247</sup> The lack of awareness would only affect the quantum of damages awarded by courts – in such a situation, the FDW would likely only obtain nominal damages.

---

<sup>240</sup> *Tuberville*. In this case, the defendant put his hand upon the sword, during non-assize time, and said “if it were not assize time, I would not take such language from you”. This did not constitute an assault.

<sup>241</sup> *The Law of Torts* at p 45-46.

<sup>242</sup> *Davidson v Chief Constable of the North Wales Police* [1994] 2 All ER 597, *Iqbal v Prison Officers Association* [2010] 2 WLR 1054.

<sup>243</sup> *Dickinson v Waters Ltd* (1931) 31 SR (NSW) 593, *Myer Stores Ltd v Soo* [1991] 2 VR 597 (AD).

<sup>244</sup> *The Law of Torts* at p 43.

<sup>245</sup> *Goel Adesh Kumar, Amutha Valli* at [70].

<sup>246</sup> *Bird v Jones* (1845) 7 QB 742.

<sup>247</sup> *Murray v Ministry of Defence* [1988] 1 WLR 692 (“*Murray*”).

### III. Harassment

#### A. Background to the Protection from Harassment Act

- 5.30 The Protection from Harassment Act (“POHA”)<sup>248</sup> is an act to protect persons against harassment and unlawful stalking. The act criminalises such behaviour, and also provides for relevant civil remedies.<sup>249</sup> This means that any act of harassment under POHA is automatically a tort, and an FDW can sue for monetary damages if she is a victim of such behaviour. This would include situations where she has been the subject of verbal abuse, surveillance and/or unwanted sexual advances.
- 5.31 In harassment cases requiring urgent intervention, the FDW might want to consider taking out an Expedited Protection Order (“EPO”)<sup>250</sup> and a Protection Order (“PO”).<sup>251</sup> The EPO is a temporary order, which is granted before a PO hearing, and will last for 28 days or till the date of the PO hearing (whichever is earlier).
- 5.32 In 2014, HOME’s shelter helped 750 domestic workers and reported 333 cases of verbal or psychological abuse. It is also not uncommon for employers to use closed-circuit television (CCTV) cameras to keep an eye on their FDWs, in a bid to deter them from abusing family members or to ensure that no strangers enter their homes.<sup>252</sup>
- 5.33 An FDW suffering from harassment can only bring a claim under POHA and not the common law tort of harassment as POHA was meant to abolish the common law tort of harassment.<sup>253</sup> This section will consider three different causes of action highlighted in POHA, namely: (i) intentionally causing harassment, alarm or distress;<sup>254</sup> (ii) causing harassment, alarm or distress;<sup>255</sup> and (iii) unlawful stalking.<sup>256</sup>

#### B. Intentionally causing harassment, alarm or distress

- 5.34 Under s 3(1) of POHA, it is an offence and an actionable tort to intentionally cause harassment, alarm or distress to another person, by (a) using any threatening, abusive or insulting words or behaviour or (b) making any threatening, abusive or insulting communication.

##### i. Definition of terms constituting offence or civil wrong

- 5.35 The terms “harassment”, “alarm”, “distress”, “threatening”, “abusive” and “insulting” have not been defined in POHA. However, these terms would be given their common-sense everyday meaning, objectively understood.<sup>257</sup>
- 5.36 Harassment describes conduct which is directed at persons and is calculated to produce discomfort and/or unease and/or distress. The essence of harassment is prolonged,

---

<sup>248</sup> *Protection from Harassment Act* (Cap 256A, 2015 Rev Ed) (“POHA”).

<sup>249</sup> Preamble of POHA.

<sup>250</sup> POHA s 13.

<sup>251</sup> POHA s 12.

<sup>252</sup> *Kok Xing Hui, Janie Tai* “Do ‘maid cameras’ cross the line” <<https://www.straittimes.com/singapore/manpower/do-maid-cameras-cross-the-line>>

<sup>253</sup> POHA s 14(1).

<sup>254</sup> POHA s 3.

<sup>255</sup> POHA s 4.

<sup>256</sup> POHA s 7.

<sup>257</sup> *Benber Dayao Yu v Jacter Singh* [2017] 5 SLR 316 (“*Benber*”) at [31]-[34].

persistent or sustained conduct.<sup>258</sup> Harassing conduct on the Internet would be covered under this cause of action.<sup>259</sup>

- 5.37 There is no requirement for the defendant's conduct to have been repetitive for a claim of intentionally causing alarm or distress to succeed.<sup>260</sup>

## ii. Defence of reasonable conduct

- 5.38 Under the reasonable conduct defence, a victim would not be able to succeed in her claim if the defendant is able to prove that his or her conduct was reasonable.<sup>261</sup>
- 5.39 The following factors would be taken into account in determining whether the defendant's conduct was reasonable: (i) the nature of the act in question; (ii) the context in which those acts occurred; and (iii) the effect of those actions on the victim.<sup>262</sup>
- 5.40 Having "reasons" for the act does not necessarily mean that the conduct was "reasonable".<sup>263</sup> Further, the fact that there was no proven detrimental effect does not preclude protection under POHA. This is unless the case was clearly minor, frivolous or trifling.<sup>264</sup> Whether the FDW is overreacting or being overly sensitive and thin-skinned would also be taken into account.<sup>265</sup>
- 5.41 For instance, true statements made about an FDW, based in fact, would likely amount to reasonable conduct.<sup>266</sup>

## C. Causing harassment, alarm or distress

- 5.42 It is an offence and a tort to (a) use any threatening, abusive or insulting words or behaviour or (b) make any threatening, abusive or insulting communication, which is heard, seen or otherwise perceived by the victim.<sup>267</sup>
- 5.43 The cause of action of *intentionally* causing harassment, alarm or distress is closely related to the cause of action of *causing* harassment, alarm or distress.<sup>268</sup> For the former, intention needs to be proven whereas for the latter, this is unnecessary.

## i. Definition of terms constituting offence or civil wrong

- 5.44 The terms "harassment", "alarm", "distress", "threatening", "abusive" and "insulting" have already been explained above. Again, there is no need for repetition of conduct to be proven.<sup>269</sup>

---

<sup>258</sup> *Chee Siok Chin v Minister for Home Affairs* [2006] 1 SLR(R) 582 at [124], considering the absence of definitions for a similarly worded provision, cited by *Benber* at [31].

<sup>259</sup> *Benber* at [25].

<sup>260</sup> The requirement of repetitive conduct seems to apply only when the victim claims that she has been harassed, and not where the defendant has caused alarm or distress. Refer to the illustrations under s3 of POHA.

<sup>261</sup> POHA s 3(3).

<sup>262</sup> Minister for Law Mr K Shanmugam, *Singapore Parliamentary Debates, Official Report* (13 March 2014), vol. 91, cited by *Benber* at [43].

<sup>263</sup> *Benber* at [49].

<sup>264</sup> at [51].

<sup>265</sup> *Benber* at [52].

<sup>266</sup> *Benber* at [44].

<sup>267</sup> POHA s 4(1).

<sup>268</sup> POHA s 3 and 4.

<sup>269</sup> Refer to discussion above on intentionally causing harassment, alarm or distress.

5.45 For example, an FDW could bring a claim against her employer for causing harassment, alarm or distress where her employer or a third party made an insulting online post against her.<sup>270</sup> There is no requirement that profanities be used.<sup>271</sup>

**ii. Defence of reasonable conduct**

5.46 The FDW would not be able to succeed in her claim if (a) the employer had no reason to believe that his/her words or conduct would be heard, seen or perceived by the FDW or if (b) the employer is able to prove that his/her conduct was reasonable.<sup>272</sup>

**D. Unlawful stalking**

**i. Making out a claim of unlawful stalking**

5.47 The stalking of another may be an offence if:

- 1) The defendant's (i.e. the stalker's) conduct is associated with stalking;
- 2) The conduct causes harassment, alarm or distress to the victim; and
- 3) The defendant either (a) intended to cause harassment, alarm or distress to the victim or (b) knew or ought to have reasonably known that his or her conduct would cause harassment, alarm or distress to the victim.<sup>273</sup>

5.48 Additionally, the offence of stalking requires a "course of conduct".<sup>274</sup> This means that the stalking must have occurred on more than one occasion. Otherwise, to fulfil the criterion, stalking that only occurred once must be (i) protracted, or (ii) committed by a person who was previously convicted under s 7 of POHA in connection to the same victim.<sup>275</sup>

**ii. Conduct constituting stalking**

5.49 Depending on the circumstances, conduct such as following the FDW, sending messages to the FDW with indecent comments about the FDW's body and using CCTV cameras to keep an eye on the FDW could constitute as an offence of unlawful stalking.<sup>276</sup>

**iii. "Ought to have reasonably known"**

5.50 This requirement would be made out if a reasonable person, having the same information as the employer, would think that the conduct is likely to have that effect.

5.51 In determining whether the defendant's conduct is likely to cause harassment, alarm or distress, the court will take into account a range of factors, including the frequency and the duration of the stalking and the circumstances in which the stalking was carried out.

---

<sup>270</sup> See POHA s 4 for illustrations.

<sup>271</sup> In *Benber*, the court found that the words used in the Web post were akin to a vulgar tirade mentioned in the illustration even though no profanities were used.

<sup>272</sup> POHA ss 4(3)(a) and (b). See above for discussion on the defence of reasonable conduct.

<sup>273</sup> POHA s 7(2).

<sup>274</sup> POHA s 7(10).

<sup>275</sup> POHA s 7(10).

<sup>276</sup> See POHA s 7(3) and illustrations. It is noted that there is no case law outlining the types of conduct which constitute as stalking.

#### iv. Defences

- 5.52 There are several defences to a claim of unlawful stalking.<sup>277</sup> The only one applicable to situations involving FDWs is the defence of reasonable conduct.
- 5.53 The courts have not had an opportunity to articulate guidelines as to how the defence of reasonable conduct would operate in the context of a claim based on unlawful stalking. It is also not known whether the factors for the defence under (intentionally) causing harassment, alarm or distress are the same for the defence when applied to a claim of unlawful stalking.<sup>278</sup>

#### E. Common situations giving rise to a cause of action

- 5.54 For cases illustrating fact patterns where the defendant's conduct constitutes an offence under POHA, please refer to Appendix 2 and 3.

**Table 7: Common situations**

Scenario	Possible cause(s) of action
Verbal abuse (E.g. name calling, shaming)	1) Intentionally causing harassment, alarm or distress; and/or 2) Causing harassment, alarm or distress
Putting FDW under surveillance using CCTV cameras	1) Unlawful stalking (Specifically s 7(3)(f))
Sexual harassment (E.g. making inappropriate sexual remarks)	1) Intentionally causing harassment, alarm or distress; and/or 2) Causing harassment, alarm or distress
Employer posting web post about FDW containing serious and unfair allegations of criminal conduct	1) Intentionally causing harassment, alarm or distress; and/or 2) Causing harassment, alarm or distress

<sup>277</sup> POHAs 7(7).

<sup>278</sup> Parliament had stated the factors to be taken into account for reasonableness in the context of harassment. Further, parliament has made a distinction between harassment and unlawful stalking by discussing them separately.

#### IV. False reports and complaints made against Foreign Domestic Workers

- 5.55 FDWs may encounter malicious employers who make false complaints to MOM or lodge false police reports out of spite. In 2016, an employer was sentenced to 7 weeks jail for falsely accusing her FDW of theft.<sup>279</sup> The employer had reportedly been displeased with the FDW's work performance and perceived poor attitude, and wanted to "get even" with the FDW. In 2017, *The Straits Times* also reported on a case<sup>280</sup> where a physically and verbally abusive employer had made a baseless complaint to MOM about his or her FDW, alleging that the FDW did not know how to do her work properly, was "crazy" and often talked to herself.
- 5.56 Incidents like these cause the FDW to suffer a number of serious losses. When a police complaint is lodged against an FDW by her employer, she becomes a suspect in a criminal investigation. At this stage, the employer would have already cancelled the FDW's work pass or would proceed to do so. While police investigations are ongoing, the FDW is not allowed to leave Singapore, and would often be sheltered at her Embassy or a frontline migrant worker service organisation's shelter. A special pass is then issued by the Controller of Immigration, which allows the FDW in question to remain in Singapore to assist in investigations.
- 5.57 FDWs whose employers make false complaints against them to MOM also face a rough time. These complaints remain on the FDW's file in the work permit application system,<sup>281</sup> thereby dissuading prospective employers from hiring them. The FDW, in the earlier mentioned case in 2017, could not find employment because of the groundless accusation levelled at her by her former employer. HOME appealed on her behalf, and the note was only removed from the system seven months later. The FDW was thereafter hired within three weeks.<sup>282</sup>
- 5.58 FDWs who are victims of these malicious acts often suffer from a loss of income, severe mental distress and loss of reputation. Even if concluded investigations reveal no evidence of wrongdoing on their part, the damage to their financial situation and reputation incurred in the interim period can be serious, and can sometimes be compensated.
- 5.59 Furnishing false information to the authorities — such as the police — is a criminal offence punishable by a fine and imprisonment.<sup>283</sup> Civil action can also be pursued in instances of malicious reporting, and has been pursued in Singapore.<sup>284</sup>
- 5.60 If an FDW faces false claims made against her, there are two ways she can try to seek redress: by bringing a claim founded in the tort of defamation, or malicious falsehood. While chances of success are low, such claims might be attempted nonetheless.

---

<sup>279</sup> Elena Chong, "Employer jailed for planting gold pendant in maid's luggage and accusing her of stealing" *The Straits Times* (10 March 2016) <<https://www.straitstimes.com/singapore/courts-crime/employer-jailed-for-planting-gold-pendant-in-maids-luggage-and-accusing-her>>.

<sup>280</sup> Joanna Seow, "Tough time for maid after false complaint" ("Tough Time") *The Straits Times* (15 April 2017) <<https://www.straitstimes.com/singapore/manpower/tough-time-for-maid-after-false-complaint>>.

<sup>281</sup> Joanna Seow, "Employers share feedback on maids" *The Straits Times* (15 April 2017) <<https://www.straitstimes.com/singapore/employers-share-feedback-on-maids>>.

<sup>282</sup> Joanna Seow, "Tough time for maid after false complaint" ("Tough Time") *The Straits Times* (15 April 2017) <<https://www.straitstimes.com/singapore/manpower/tough-time-for-maid-after-false-complaint>>.

<sup>283</sup> Section 182 of the Penal Code states that providing false information with the intention of causing a public servant to use his lawful power to the injury of another person is an offence punishable with imprisonment for a term which may extend to one year, or with fine which may extend to \$5,000, or with both.

<sup>284</sup> *Goh Lay Kim and others v Isabel Redrup Agency Pte Ltd and another appeal* [2017] 1 SLR 546 ("Isabel Redrup 1"); *Isabel Redrup Agency Pte Ltd v A L Dakshnamoorthy and others* [2016] 2 SLR 634; *ATU and others v ATY* [2015] 4 SLR 1159 ("ATU v ATY"); *Yeap Beng San Louis v Choo Pit Hong Peter* [1999] 1 SLR(R) 397.

- 5.61 With regards to the tort of defamation, malice is an important factor to prove when trying to claim for exemplary damages. Moreover, malice is also an important element to prove to demolish certain defences, e.g. fair comment. Nevertheless, malice is not an element required to establish defamation. The main challenge in these cases therefore often lies in the FDW's ability to prove that the complaint was made maliciously. As a matter of policy, courts are wary of discouraging people from reporting suspected crimes to the police. The best way to overcome this problem is to encourage FDWs to collect evidence that can counter such deliberately unmeritorious allegations.<sup>285</sup>

## A. Defamation

- 5.62 Defamation is a claim founded on words. Contrary to the old adage about sticks and stones, defamation recognises that words have power, and that false and irresponsible statements can prove as damaging—or even more damaging—than a slap to the face.
- 5.63 There are two forms of defamation: libel (words in permanent form) and slander (words that are spoken or in other temporary forms). Libel is actionable *per se* without proof of special damage,<sup>286</sup> whilst slander requires such proof. Falsely making a complaint about an FDW would classify as libel, and thus only libel is relevant to this present discussion.

### i. Elements of a defamation

- 5.64 To establish a case for defamation, three main legal requirements must be fulfilled:<sup>287</sup>
- 1) The statement must be defamatory in nature;
  - 2) The statement must be published; and
  - 3) The statement must refer to the plaintiff.
- 5.65 While not a requirement *per se*, it is important that the FDW has proof of the employer's malice should the case go to court. This is because the legal defence of qualified privilege<sup>288</sup> applies to police reports, and might apply to false complaints in general. Aside from issues of liability, the presence of malice may also affect the quantum of damages awarded.<sup>289</sup>

#### (a) *Whether statement is defamatory in nature*

- 5.66 To assess whether a statement is defamatory, the court is not concerned with the actual harm to the reputation of the plaintiff, but on the tendency of the allegedly defamatory statement to lower the reputation of the plaintiff. The test of whether a statement is defamatory is an objective one based on the perspective of the reasonable third party.
- 5.67 A statement is defamatory if it tends to:
- 1) Lower the plaintiff in the estimation of right-thinking members of society in general
  - 2) Cause the plaintiff to be shunned or avoided; or
  - 3) Expose the plaintiff to hatred, contempt or ridicule.

---

<sup>285</sup> See Chapter 2, Section 8 "Evidence" for more details.

<sup>286</sup> "Special" damages are specific, quantifiable damages, such as pre-trial loss of earnings, loss of profits or medical expenses.

<sup>287</sup> *The Law of Torts* at p 503.

<sup>288</sup> This is explained in the following section.

<sup>289</sup> *The Law of Torts* at p 503.

- 5.68 Test (1) is most widely used by Singapore courts, but all three have been applied locally and can be pleaded concurrently. Being the subject of a false accusation regarding one's character is sufficient to satisfy the requirements of (1). This is especially so for FDWs, who are entrusted with the household. Trustworthiness and general integrity are important to employers seeking to hire FDWs. Statements that tarnish an FDW's reputation have tangible and dire consequences on the FDW's future employment prospects.
- 5.69 An FDW wishing to bring a civil claim for defamation for a false complaint or report made by her employer will need to have a copy of the complaint or the police report – the exact statement and words used by the employer are key.<sup>290</sup> Defamatory allegations need not be explicit assertions – as long as the employer sates that there are reasonable grounds to suspect that the FDW has committed a serious act, it can be defamatory.<sup>291</sup>
- 5.70 A statement may be defamatory based on:
- 1) The natural and ordinary meaning of the words used, or as may be reasonably inferred from the words: the meaning of the words as they would be understood by the ordinary reasonable person, not unduly suspicious or avid for scandal,<sup>292</sup> based on his general knowledge and common sense;<sup>293</sup> or
  - 2) True or legal innuendo:<sup>294</sup> words which appear innocuous, but may be understood to be disparaging of the plaintiff by third parties who have knowledge of special facts which are not generally known.

**(b) Whether the statement is published**

- 5.71 The statement made by the defendant employer referring to the FDW must have been communicated to at least one other person other than the FDW who would reasonably understand the statement to be defamatory to the FDW.
- 5.72 In the case of false complaints, even if the statement did not travel beyond the police or MOM, the investigating officer or the MOM staff would count as a third party. However, the limited reach of the defamatory statement would affect the quantum of damages that would likely be awarded.<sup>295</sup>
- 5.73 After a case is made out, the employer could raise one of the defences discussed below.

**ii. Defences to the Tort of Defamation**

- 5.74 In the case of false reporting, the defendant employer may raise one or more of the following defences:
- 1) Qualified privilege;<sup>296</sup> and/or
  - 2) Justification.

<sup>290</sup> Requests for reports can be made online: <<https://www.police.gov.sg/e-services/apply/certified-true-copy-of-police-document>>.

<sup>291</sup> *Isabel Redrup 1* at [99], *Low Tuck Kwong v Sukanto Sia* [2014] 1 SLR 639 at [42].

<sup>292</sup> For example, if the employer made a complaint that the FDW was "careless with my belongings", it would be stretching the limits of reason for the FDW to claim that the employer was calling her a thief.

<sup>293</sup> *Review Publishing Co Ltd v Lee Hsien Loong* [2010] 1 SLR 52 at [53].

<sup>294</sup> *The Law of Torts* at p 516.

<sup>295</sup> *Isabel Redrup 1* at [151].

<sup>296</sup> There is also the defence of absolute privilege, which applies in situations where free speech is so important that complete and absolute immunity is afforded to defamatory statements, even where they may be untrue and made maliciously. These include statements which attract parliamentary privilege, statements made during the course of or related to judicial proceedings and statements relating to Executive matters. However, this defence is unlikely to apply to FDW cases.

### **(c) Qualified Privilege**

5.75 Qualified privilege is an immunity from a lawsuit for defamation, for acts committed in the performance of a legal or moral duty. Gratuitous complaints to prosecuting authorities are protected by qualified privilege,<sup>297</sup> however, the defence can be defeated by proof that the defendant's statements were motivated by malice. Therefore, if the FDW can prove that the report was made by her employer out of malice, the employer would not be able to rely on the defence.

#### **1. Proving malice**

5.76 Malice can be proved in two ways:<sup>298</sup>

- 1) By showing that the defendant knew the statement was false, was reckless as to its truth, or did not believe in its truth; and/or
- 2) Even if the defendant had a genuine or honest belief in the truth of the defamatory statement, by showing that his dominant motive was to injure the plaintiff or was otherwise improper.

5.77 To prove malice, detailed records of any correspondence between the FDW and her employer should be kept.

### **(d) Justification**

5.78 The defence of justification operates on the basis that there were sound reasons why the defamatory statements were made.

5.79 In order for the defence of justification to succeed for a police report, the defendant must show that there were in fact reasonable grounds to suspect that the FDW plaintiff had committed the alleged offences.<sup>299</sup> For example, actually catching the FDW in the act of committing the offence, or hearing the FDW talk about it with a friend could constitute "reasonable grounds".

5.80 The defendant also cannot justify the existence of reasonable grounds for suspicion by relying on what someone else had mentioned to him. The defendant has to establish that there are objectively reasonable grounds to suspect the plaintiff, and not that the information had come from an honest and reliable source.<sup>300</sup>

### **iii. Specific damages for the tort of defamation**

5.81 The FDW who has successfully established a cause of action in defamation against which there are no valid defences may:

- 1) Claim monetary damages<sup>301</sup>; and/or

---

<sup>297</sup> *Isabel Redrup 1* at [77].

<sup>298</sup> *Chan Cheng Wah Bernard v Koh Sin Chong Freddie* [2012] 1 SLR 506 at [90].

<sup>299</sup> *Isabel Redrup 1* at [101].

<sup>300</sup> *Shah v Standard Chartered Bank* [1999] QB 241 at [269].

<sup>301</sup> For more details, see Chapter 2, section 5(V) "Damages".

- 2) Apply for an injunction<sup>302</sup> restraining future publication, and in exceptional circumstances, an injunction mandating that the defendant withdraw the defamatory statement.
- 5.82 Generally, only (1) would be relevant in cases of false reporting.
- 5.83 Aside from the usual pecuniary and non-pecuniary losses, the FDW can also specifically claim for any loss suffered due to loss of reputation: losing out on the hospitality of friends, benefits tied to reputation.
- 5.84 Aggravated damages may be awarded in respect of additional injury caused by the defendant's conduct or bad motives.<sup>303</sup> With regards to defamation, such conduct may take the following forms:
- 1) Refusal to apologise for defamatory remarks;<sup>304</sup>
  - 2) Repetition of defamatory remarks;<sup>305</sup>and
  - 3) Persisting in pleas of justification until a very late stage of the proceedings.<sup>306</sup>
- 5.85 It should be noted that, in the event that damages are awarded to the FDW, they will be limited. Where a person's reputation is damaged and damages are concerned, case law has shown that courts draw a distinction between public figures and private actors. The former will be able to claim for larger quantum of damages.<sup>307</sup> FDWs, instead, fall into the latter category. Unless an FDW can prove real loss as a result of the defamation, it is likely that damages awarded to her will be a nominal sum.

## B. Tort of malicious falsehood

- 5.86 The elements that must be established for a claim in malicious falsehood to succeed are set out in *WBG Network (Singapore) Pte Ltd v Meridian Life International Pte Ltd and others*<sup>308</sup> at [68], and are as follows:
- 1) The defendant published words which are false to third parties;
  - 2) They refer to the claimant or his property or his business;
  - 3) They were published maliciously; and
  - 4) Special damage has followed as a direct and natural result of their publication.
- 5.87 A claim under malicious falsehood might be possible even if a case in defamation cannot be made out. This is because it can be difficult to show that the statement was defamatory to the FDW. It is thus worth making both claims when faced with a case of false reporting.
- 5.88 However, the falsity of the statements and the malice of the employer would have to be made out as part of the claim. This is different from defamation, where these elements would only matter if and when the issue goes to court.

<sup>302</sup> An injunction is a judicial order that compels a party to do or refrain from specific acts.

<sup>303</sup> For more details, see Chapter 2, Section 5(V) "Damages".

<sup>304</sup> *ATU v ATY* at [64]; *Lim Eng Hock Peter v Lin Jian Wei* [2010] 4 SLR 357 ("*Lim Eng Hock v Lin Jian Wei*") at [38]; *DHKW Marketing v Nature's Farm Pte Ltd* [1998] 3 SLR(R) 774 at [43]; *Lee Kuan Yew v Vinocur John* [1996] 1 SLR(R) 840 ("*Vinocur John*") at [15].

<sup>305</sup> *Vinocur John* at [15]; *Lee Kuan Yew v Seow Khee Leng* [1988] 2 SLR(R) 252 at [28].

<sup>306</sup> *DHKW Marketing v Nature's Farm Pte Ltd* [1998] 3 SLR(R) 774 at [42].

<sup>307</sup> *Lim Eng Hock v Lin Jian Wei*.

<sup>308</sup> *WBG Network (Singapore) Pte Ltd v Meridian Life International Pte Ltd and others* [2008] 4 SLR(R) 727.

- 5.89 The remaining question is if requirement (4) can be made out. Although this has yet to be tested for cases relating to FDWs, it is likely that special damage need not be proven for false police reports.<sup>309</sup>
- 5.90 Given that allegations of theft and/or other crimes in the household do disparage an FDW carrying out the trade of domestic work, and may also be calculated to cause pecuniary damage, the elements to the claim can be made out. Special damage hence need not be proved.
- 5.91 In any case, the FDW might be able to make a claim for special damages, if she was forced to remain unemployed for a long time pending the outcome of the investigations and in some cases also subjected to emotional trauma.

## V. Damages

- 5.92 The general aim of an award of damages in tort is to restore an injured party to the position he or she would been in if the tort had not been committed. The remedies that are available to an FDW will depend on whether the tort is performed intentionally (intentional tort) or whether it is a result of a lack of reasonable care (tort of negligence). This section will go through the various types of compensation that might be obtained, namely, civil compensation, criminal compensation, and compensation for harassment.

### A. Civil compensation for tortious acts<sup>310</sup>

- 5.93 Where an FDW has suffered personal injuries as a result of a tortious act there are two broad categories of damages that are generally available to her: compensatory and non-compensatory damages. These two broad categories of damages are further broken down into specific types of damages that can be claimed.

#### i. Compensatory damages

##### (a) Special damages

- 5.94 Special damages compensate the FDW for any financial losses suffered as a result of the incident. These can include costs incurred for:
- 1) Medical and hospitalisation bills;<sup>311</sup>
  - 2) Loss of income when the injured party is unable to work;<sup>312</sup> and
  - 3) Repair or replacement of damaged property.
- 5.95 The general rule is that special damages have to be strictly proved to be recoverable.<sup>313</sup> Thus, evidence of medical expenses, hospitalization bills and loss of income will need to be provided to the court if the FDW wishes to claim for these sums.

---

<sup>309</sup> Section 5 of the Defamation Act (Cap 75, 2014 Rev Ed) states that if the defamatory words in question are calculated to disparage the plaintiff in any profession or trade, then it shall not be necessary to prove special damage. Section 6 of the same act further states that if the words are calculated to cause pecuniary damage to the plaintiff, and if they are either published in writing or in respect of the person's profession or trade, then special damage also need not be proven.

<sup>310</sup> This section does not include harassment. For compensation for harassment, see Chapter 2, Section 5(V)(B) "Compensation for harassment".

<sup>311</sup> *Tan Hun Hoe v Harte Denis Mathew* [2001] 3 SLR(R) 414; [2001] SGCA 68 at [36].

<sup>312</sup> *Tan Juay Mui v Sher Kuan Hock* [2012] 3 SLR 496; [2012] SGHC 100 at [59]-[62].

<sup>313</sup> *Wee Sia Tian v Long Thik Boon* [1996] 2 SLR(R) 420; [1996] SGHC 132.

### 1. Pre-trial financial loss

- 5.96 The FDW can claim for pecuniary loss suffered from the date of the incident up to the date of the trial. This includes loss of income and medical expenses incurred.
- 5.97 The claim for loss of income includes wages and salary and other material benefits such as allowances. Medical and related expenditure have to be reasonably necessary to the treatment of the plaintiff. This includes transportation and travelling expenses incurred by the plaintiff in order to get the treatment required.
- 5.98 While the FDW will be required to “act reasonably”<sup>314</sup> to mitigate his or her losses (e.g. by finding alternative employment to mitigate any pre-trial loss of earnings), the standard expected is not high.<sup>315</sup> The burden of proving that the loss has not been mitigated lies with the defendant (i.e., the person who committed the tortious act).<sup>316</sup>
- 5.99 The Court of Appeal in *Chai Kang Wei Samuel v Shaw Linda Gillian*<sup>317</sup> held that the plaintiff had no duty to mitigate her loss of earnings during the period that she was on medical leave since the injuries she suffered as a result of the tort meant that she was unable to work during this period.

### 2. Post-trial financial loss

- 5.100 Future pecuniary loss (e.g. loss of earnings, medical expenses and expenditure on post-incident special accommodation and equipment needed) is assessed and awarded to the plaintiff as a lump sum.
- 5.101 When computing the total amount of compensation, the court would apply a multiplier to the plaintiff’s expected net annual loss, taking into account the time for which the disability would last (in the case of personal injury where future medical care is needed) and/or the number of years the plaintiff would have continued to work if not for the injury (in the case of loss of earnings).
- 5.102 Damages on the basis of loss of future earnings may be awarded to an injured party who is unable to go back to his or her pre-accident employment and has to take on a lower paying job.<sup>318</sup> In such a case, the court will award the difference in income between the amount the FDW could have earned and the amount she would earn as a result of the disability. If the FDW earns a post-injury income, which is more than her pre-injury income, no award for loss of future earnings will be made.

#### **(b) General damages**

- 5.103 General damages include claims for non-financial losses suffered by the FDW, the most common of which are loss of earning capacity, pain and suffering and loss of amenities. Damages for pain and suffering and loss of amenities are often assessed together and made as a lump sum award.<sup>319</sup> It is only in extreme cases, such as where the plaintiff has

---

<sup>314</sup> *OTF Aquarium Farm (formerly known as Ong's Tropical Fish Aquarium & Fresh Flowers) (a firm) v Lian Shing Construction Co Pte Ltd (Liberty Insurance Pte Ltd, Third Party)* [2007] SGHC 122 (“*OTF Aquarium Farm*”) at [55].

<sup>315</sup> *OTF Aquarium Farm* at [55].

<sup>316</sup> *Jia Min Building Construction Pte Ltd v Ann Lee Pte Ltd* [2004] 3 SLR(R) 288 at [71].

<sup>317</sup> *Chai Kang Wei Samuel v Shaw Linda Gillian* [2010] 3 SLR 587 (“*Chai Kang Wei Samuel*”) at [42]. See Appendix 3 for case summary.

<sup>318</sup> *Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 at [38].

<sup>319</sup> *Au Yeong Wing Loong v Chew Hai Ban & Anor* [1993] 2 SLR(R) 290 (“*Au Yeong*”) at [21].

been rendered blind, paraplegic or sexually incapable that a separate award will be made for loss of amenities.<sup>320</sup>

- 5.104 Unlike special damages, general damages are not easily quantifiable and depend on an assessment of the severity of the injury. As a result, expert testimony and evidence from the FDW and their relatives and/or friends as to the effect of the injury may be taken into account in deciding the sum to be awarded.<sup>321</sup>

### 1. Loss of earning capacity

- 5.105 An FDW may claim for loss of future earning capacity where, as a result of the injury caused by the defendant, there is a risk that she will be disadvantaged in securing an equivalent job in the open labour market. In effect, the purpose of this type of award is to compensate an injured party for the weakening of his or her competitive position in the labour market. This is distinct from an award for loss of future earnings.<sup>322</sup>
- 5.106 Here, the FDW does not suffer an immediate reduction in her salary,<sup>323</sup> but there is a risk that she may lose that job in the future and may, as a result of the injury caused by the defendant, be at a disadvantage in getting another job or an equally well-paid job in the open labour market.<sup>324</sup> Loss of earning capacity can only be awarded if there is a substantial or real risk that the FDW could lose their present job at some time before the estimated end of their working life and the FDW will, because of the injuries, be at a disadvantage in the open employment market.<sup>325</sup>
- 5.107 In awarding damages for loss of earning capacity, the court must take a “rough and ready” approach, taking into account all the factors relevant to the case, such as the FDW’s age, skills, nature of disability, whether she is capable of undertaking only one type of work, or whether she is capable of undertaking other types of work as well.<sup>326</sup> In situations where awards for both loss of future earnings and loss of earning capacity are plausible on the facts, the FDW is entitled to claim for both.
- 5.108 An FDW will have a strong case to be awarded loss of earning capacity if she had suffered from a serious injury which severely impaired or continues to impair her ability to carry out her work as an FDW, by preventing her, for example, from working for long hours as a result of a traumatic brain injury.<sup>327</sup>

### 2. Pain and suffering and loss of amenities

- 5.109 Damages are awarded for pain and suffering to compensate the FDW for the physical pain and mental distress suffered, pre-trial and in the future, as a result of the injury. This is a type of subjective loss since it depends on the FDW’s awareness of his or her actual suffering. Damages for shock, anxiety, fear frustration and anguish can be claimed under this head of damages<sup>328</sup>. However, damages for pain and suffering are only available if the

---

<sup>320</sup> *Sivakami d/o Sivanathan v Attorney-General* [2012] SGHCR 5 (“*Sivakami*”).

<sup>321</sup> See, for instance, *Chai Kang Wei Samuel* at [12]-[16].

<sup>322</sup> *Mykytowych, Pamela Jane v VIP Hotel* [2016] SGCA 44 (“*Mykytowych*”) at [140].

<sup>323</sup> For instance, due to the compassion of the then employer, see *Smith v Manchester Corporation* [1974] KIR 1.

<sup>324</sup> *Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin* [2012] 3 SLR 1003 at [38].

<sup>325</sup> *Chai Kang Weiat* [36]-[37].

<sup>326</sup> *Mykytowych* at [141].

<sup>327</sup> *Chai Kang Wei* at [37]. See Appendix 3 for case summary.

<sup>328</sup> *Au Yeong* at [11], *Tan Kok Lam (next friend to Teng Eng) v Hong Choon Peng* [2001] 1 SLR(R) 786 (“*Tan Kok Lam*”) at [30].

plaintiff is aware of her condition. Thus, damages are not available if mental impairment results in the plaintiff being unaware of what has happened to her.

5.110 The FDW can also claim for loss of amenities. Loss of amenities is assessed objectively, independent of whether the FDW is able to appreciate that she has suffered this loss.<sup>329</sup> This head of damage compensates the FDW for the reduced enjoyment of life as a result of an impairment due to the inability to pursue the activities he or she pursued beforehand. The court would take into account hobbies and habits of a particular individual prior to the incident. This head of damages may cover various types of losses, including:<sup>330</sup>

- 1) Loss or impairment of one of the five senses;
- 2) Alteration of personality;
- 3) Loss of sexual function;
- 4) Interference with marriage prospects;
- 5) Interference with leisure activities; and
- 6) Loss of congenial employment.

5.111 Usually, damages for pain and suffering and loss of amenities are assessed together and a lump sum is awarded based on the court comparing the present case to previous cases that involve similar injuries, and considering the special circumstances of the present case and special features of the FDW. In practice, the courts will refer to the “*Guidelines for the Assessment of General Damages in Personal Injury Cases*” (the “Guidelines”),<sup>331</sup> when deciding what damages to award.

### **(c) Aggravated damages**

5.112 Aggravated damages provide compensation for mental distress or injury to feelings caused by (i) the manner or motive with which the tort was committed or (ii) the wrongdoer’s conduct subsequent to the wrong. Aggravated damages aim to appropriately compensate injury to an FDW’s “proper feelings of dignity and pride” or where the wrong gave rise to “humiliation, distress, insult or pain”.<sup>332</sup> This type of damages are primarily intended to augment the award of general damages when the conduct or motive of the defendant “aggravates” the injury caused.

5.113 Examples of the sort of conduct which may give rise to aggravated damages include conduct which was offensive, or which was accompanied by spite, malice, insolence or arrogance.<sup>333</sup>

5.114 In awarding aggravated damages, the court takes into account, amongst other things, evidence of the manner and circumstances in which the tort was committed and events up to and including the trial.<sup>334</sup> This includes both the defendant’s behaviour and the injured party’s conduct (e.g. aggravated damages may be reduced if the plaintiff has provoked the defendant).<sup>335</sup>

5.115 Before aggravated damages can be awarded, the FDW must show:

---

<sup>329</sup> *Tan Kok Lam* at [28].

<sup>330</sup> Chin, J. (2005). *Practitioners’ library: Assessment of damages: Personal injuries and fatal accidents*. Singapore: LexisNexis, 5-35.

<sup>331</sup> Academy Publishing, 2010.

<sup>332</sup> *Rookes v Barnard* [1964] AC 1129 at [1226]-[1227].

<sup>333</sup> *Tan Harry v Teo Chee Yeow Aloysius* [2004] 1 SLR(R) 513 (“*Tan Harry*”) at [82].

<sup>334</sup> *Li Siu Lun v Looi Kok Poh and another* [2015] 4 SLR 667 (“*Li Siu Lun*”) at [164].

<sup>335</sup> *Koh Sin Chong Freddie v Chan Cheng Wah Bernard and others and another appeal* [2013] SGCA 46 at [55].

- 1) Evidence of contumelious or exceptional conduct or motive on the part of the defendant in inflicting the injury; and
- 2) Intangible loss was suffered by the FDW (injury to personality, injury to feelings or some form of distress or mental anguish).<sup>336</sup>

5.116 Aggravated damages should bear some semblance of proportionality to the basic award,<sup>337</sup> typically not exceeding twice the amount of the basic damages awarded.<sup>338</sup>

5.117 With regards to FDW abuse cases, the High Court in *Tay Wee Kiat and another v Public Prosecutor and another appeal*<sup>339</sup> made some useful comments on the prevalence of psychological abuse in FDW abuse cases:

“The harm that ensues from the abuse of a [FDW] often but does not always consist solely in physical hurt. Psychological abuse, in conjunction with physical harm, is what characterises egregious instances of [FDW] abuse and makes them especially abhorrent.”<sup>340</sup>

5.118 Further, in the case of *Public Prosecutor v Chong Siew Chin*, Yong CJ (as he was then) stated in that “where mental abuse was calculatedly applied in conjunction with physical abuse to a [FDW], this should be viewed as a serious aggravating factor”.<sup>341</sup>

5.119 These statements should be utilized by practitioners representing FDWs in abuse cases. The outrageous conduct of the employer in abuse cases means there is often a strong argument that aggravated damages should be awarded.

5.120 Aggravated damages are more often awarded in cases involving sexual abuse as a matter of course, given the egregious nature of sexual abuse in general. In the English case of *BDA v Domenico Quirino*, the court awarded aggravated damages where the plaintiff suffered humiliation as a result of disclosing the details of her abuse after years of abuse as well as the attack on her credibility during the course of the criminal trial.<sup>342</sup>

## ii. Non-compensatory damages

### (a) Nominal damages

5.121 Trespass to the person is actionable *per se*, which means the plaintiff does not need to prove injury.<sup>343</sup> Where such a tort has been committed but the actual damage and injury cannot be proved, the plaintiff may be able to recover a nominal sum of damages.<sup>344</sup> Nominal damages are usually small.

### (b) Punitive damages

5.122 Unlike aggravated damages, the main rationale for an award of punitive damages is deterrence.<sup>345</sup> Punitive damages seek to punish the wrongdoer and to discourage similar

<sup>336</sup> *Tan Harry* at [82].

<sup>337</sup> *Li Siu Lun* at [160].

<sup>338</sup> *Li Siu Lun* at [193].

<sup>339</sup> *Tay Wee Kiat and another v Public Prosecutor and another appeal* [2018] SGHC 42 (“*Tay Wee Kiat 1*”).

<sup>340</sup> *Tay Wee Kiat 1* at [66].

<sup>341</sup> *Public Prosecutor v Chong Siew Chin* [2001] 3 SLR(R) 851; [2001] SGHC 372 at [42].

<sup>342</sup> *BDA v Domenico Quirino* [2015] EWHC 2974 (“*Domenico Quirino*”) at [48].

<sup>343</sup> *The Law of Torts* at p 31.

<sup>344</sup> *Murray* at 703.

<sup>345</sup> *The Law of Torts* at p 729.

behaviour in the future. Punitive damages are only awarded in limited circumstances as they go beyond what is necessary to compensate the aggrieved party for its losses.

5.123 In *ACB v Thomson Medical*, the court set out the following principles in relation to punitive damages:

- 1) Punitive damages may be awarded in tort where the totality of the defendant's conduct is so outrageous that it warrants punishment, deterrence, and condemnation.<sup>346</sup>
- 2) Proof of intentional wrongdoing or conscious recklessness is not a prerequisite to the award of punitive damages in tort.<sup>347</sup>
- 3) A punitive award may also be made where the wrongdoing was a result of the defendant's negligence.<sup>348</sup>
- 4) It is available even in circumstances when the defendant has already faced disciplinary or criminal sanction. While the fact that the defendant has already been punished is a weighty factor to be considered when deciding whether to award punitive damages, it is neither determinative nor conclusive.<sup>349</sup>

5.124 In light of the decision in *ACB v Thomson Medical*, it would be a good tactic to argue for punitive damages for claims relating to physical or sexual abuse of FDWs, in particular, where the defendant's conduct is so outrageous that it warrants punishment, deterrence, and condemnation.

### iii. Approach in awarding damages

5.125 In assessing the quantum for an award of damages, the courts will refer to the Guidelines,<sup>350</sup> together with precedents of awards that have been granted in similar cases. The Guidelines, which were published by the State Courts of Singapore, together with the Singapore Academy of Law, set out the estimated quantum of damages that can be expected from a comprehensive list of different types of personal injuries. At present, the use of the Guidelines plays an important role in assisting the courts in their assessment of damages and is used extensively by the Court.

5.126 The range of claimable damages as provided in the Guidelines are based on actual awards given in local court decisions and are categorised depending on the severity of the injury: (1) Severe; (2) Moderately Severe; (3) Moderate; and (4) Minor. There is no single definition of what constitutes, for example, a "Severe" or "Moderately Severe" injury. Instead, the Guidelines set out a list of factors to be taken into account for each type of injury in order to determine the severity of the harm caused. An example illustrating how the Guidelines are applied is shown at Section VI.<sup>351</sup>

5.127 At present, the Guidelines assist the courts in their assessment of damages for pain and suffering and loss of amenities. For example, the Guidelines were referred to extensively by the judge in the High Court case of *Chang Mui Hoon v Lim Bee Leng*<sup>352</sup> in which the plaintiff claimed for general damages in respect of a whiplash injury to her neck and, alleged post-traumatic stress disorder and depression which were suffered as a result of a motor car accident.

---

<sup>346</sup> *ACB v Thomson Medical Pte Ltd and others* [2017] 1 SLR 918 ("*ACB v Thomson Medical*") at [176].

<sup>347</sup> *ACB v Thomson Medical* at [201].

<sup>348</sup> *ACB v Thomson Medical* at [206].

<sup>349</sup> *ACB v Thomson Medical* at [187].

<sup>350</sup> Academy Publishing, 2010.

<sup>351</sup> See Chapter 2, Section 5(VI) "Annex 1: Guidelines for the assessment of general damages in personal injury cases".

<sup>352</sup> *Chang Mui Hoon v Lim Bee Leng* [2013] SGHCR 17.

5.128 In cases where the harm or injury suffered is not listed in the Guidelines, the English “*Guidelines for the Assessment of General Damages in Personal Injury Cases*” (the “English Guidelines”)<sup>353</sup> may be referred to as persuasive authority.<sup>354</sup>

**(a) Damages for physical harm**

5.129 In assessing the quantum claimed for physical injuries suffered, the court will refer to the Guidelines, together with precedents of awards that have been granted in similar cases. The FDW may also be able to claim for aggravated and/or punitive damages.

**(b) Damages for psychiatric harm**

5.130 The Guidelines set out the range of damages that should be awarded for a spectrum of psychiatric injuries (see Section VI).<sup>355</sup> As noted above, the quantum of damages awarded will depend on the severity of the injury. The types of psychiatric injuries covered by the Guidelines and the associated range of damages are listed in the table below.

**Table 8: Types of injury and their associated range of damages**

Type of Injury	Range of damages (SGD)	
General psychiatric injury	Severe:	S\$25,000 to S\$55,000
	Moderately severe:	S\$8,000 to S\$25,000
	Moderate:	S\$3,000 to S\$8,000
	Minor:	S\$1,000 to S\$3,000
Post-traumatic Stress Disorder (“PTSD”)	Severe:	S\$25,000 to S\$50,000
	Moderately severe:	S\$10,000 to S\$25,000
	Moderate:	S\$4,000 to S\$10,000
	Minor:	S\$2,000 to S\$4,000
Chronic Pain Syndrome	Severe:	S\$20,000 to S\$35,000

<sup>353</sup> Oxford University Press, 12th Ed, 2013.

<sup>354</sup> Indeed, the Singapore Guidelines state in the preface that where no local case precedents were available for particular types of injuries, the working committee considered the ranges in the English Guidelines.

<sup>355</sup> See Chapter 2, Section 5(VI) “Annex 1: Guidelines for the assessment of general damages in personal injury cases”.

Type of Injury	Range of damages (SGD)
	Moderately severe: S\$10,000 to S\$25,000 Moderate: S\$5,000 to S\$10,000
Reflex Sympathetic Dystrophy	Severe: S\$25,000 to S\$50,000 Moderately severe: S\$12,000 to S\$25,000 Moderate: S\$5,000 to S\$12,000
Somatoform Disorder	In the range of: S\$22,000

**(c) Damages for sexual abuse**

- 5.131 Sexual abuse takes various forms, for instance, attempted rape and rape. Civil claims for sexual abuse often contain a mix of damages, for example, this can include claims for physical injury and psychiatric injury. While it is known that the harm suffered by the victim is grave, quantifying the amount of compensation that should be awarded to the victim is often challenging.
- 5.132 If an FDW suffers a psychiatric injury (for example, PTSD) as a result of sexual abuse, she can claim for the various types of damages under special and general damages. A judge will look at the components of special and general damages for each injury and add them up in order to reach the total amount of the award.
- 5.133 There are, as yet, no reported civil claims for sexual abuse in Singapore. As such, it is not clear what quantum of damages might be awarded to victims of sexual abuse for pain and suffering or loss of amenities. It is likely that the Singapore courts would look to the approach taken by the English courts for guidance.
- 5.134 Damages for loss of earnings and loss of earning capacity may be awarded where a victim suffers from psychiatric injury as a result of sexual abuse. In the English case of *FKB v Lampitt*,<sup>356</sup> the plaintiff suffered chronic dysthymia and chronic post-traumatic disorder as a result of serious sexual, physical and emotional abuse suffered. £20,000 was awarded for the plaintiff's disadvantage on the labour market and £2,000 was awarded for a future loss of earnings.<sup>357</sup>

<sup>356</sup> *FKB v Lampitt* [2015] EWHC 3368 ("*FKB v Lampitt*").

<sup>357</sup> *FKB v Lampitt*. See also *Dominico Quirino*. See Appendix 3 for case summaries.

- 5.135 Under certain circumstances, aggravated and punitive damages may also be awarded. In the case of *GLB v TH*,<sup>358</sup> £15,000 in aggravated damages was awarded to the plaintiff for sexual abuse and attempted rape.

## **B. Compensation for harassment**

- 5.136 Sections 3 and 4 of POHA prohibit threatening, abusive, or insulting words or behaviour that cause harassment, alarm or distress. Section 5 prohibits threats to use unlawful violence or attempts to provoke other people to use unlawful violence. POHA also allows a victim of harassment to bring civil proceedings against the perpetrator.<sup>359</sup> In such cases, the court may award the victim damages on a discretionary basis.
- 5.137 If a practitioner is bringing a civil claim on behalf of an FDW for the intentional tort of trespass to the person, he or she may also consider a concurrent claim against the perpetrator under POHA. In cases of trespass to the person, it is likely that the elements of the offences under sections 3, 4, or 5 of POHA will also be made out.

### **i. Injury to feelings**

#### **(a) The position in Singapore**

- 5.138 In Singapore, damages for injury to feelings and emotional harm, which fall short of a recognised psychiatric injury, may be awarded for claims brought under POHA. At the moment, there are no precedents. While it remains to be seen whether damages for injury to feelings could be awarded under POHA, such an application could be made.
- 5.139 There has been at least one occasion in Singapore where damages for injury to feelings, falling short of psychiatric injury, have been awarded in a tort action.<sup>360</sup> In this case, the judge found that the plaintiff did not suffer from a “recognizable psychiatric illness”. Nonetheless, in light of the overall mental distress caused to the plaintiff, the judge awarded S\$2,000 in nominal damages “for pain and suffering arising out of the plaintiff’s (non-clinically significant) depression and anxiety”.<sup>361</sup>
- 5.140 However, the position in foreign jurisdictions, specifically the position in Australia and the United Kingdom (“UK”) can be referred to.

#### **(b) The position in foreign jurisdictions**

- 5.141 Under the UK Protection from Harassment Act 1997 (“UK PHA”), damages may be awarded for (among other things) “*any anxiety caused by the harassment and any financial loss resulting from the harassment*”.<sup>362</sup> Similarly, under the Australian Human Rights Commission Act, (“Australian HRCA”) it is possible to claim for injured feelings where there is no psychiatric damage, though such damages are not specifically referred to in the statute.<sup>363</sup>

---

<sup>358</sup> *GLB v TH* [2012] EWHC 3904. See also *C v WH* [2015] EWHC 2687 [2015] EWHC 2687, where plaintiff had been groomed and sexual abuse had occurred. However, aggravated damages were not awarded. See Appendix 3 for case summary.

<sup>359</sup> POHA s 11.

<sup>360</sup> *Sivakami*.

<sup>361</sup> *Sivakami* at [30].

<sup>362</sup> Protection from Harassment Act 1997 s 3(2).

<sup>363</sup> *Sidhu v Raptis* [2012] FMCA 338 at [60]. In this case, the plaintiff received compensation of AUD \$2,000 for emotional upset and injury to feelings caused as a result of a racial taunt made by the respondent.

5.142 The leading case in relation to injury to feelings is *Vento v Chief Constable of West Yorkshire* (“Vento”).<sup>364</sup> The UK Court of Appeal in this case recognised that damages should be compensatory, but should not be so low so as to diminish the respect for the policy behind the statute. The court then laid down some guidelines for offering compensation for injury to feelings ranging from £500 to £25,000, depending on the impact and severity of the harm:<sup>365</sup>

- 1) Highest band: £25,200 - £42,000<sup>366</sup>
- 2) Middle band: £8,400 - £25,200
- 3) Lowest band: £800 - £8,400<sup>367</sup>

5.143 The amounts set out in *Vento* have since been increased following decisions in subsequent English cases.<sup>368</sup> A breakdown of the revised guidelines can be seen below. Though *Vento* itself was not decided under the UK PHA, it has been applied in relation to cases decided under the UK PHA. However, when compared to the Singapore Guidelines, the amounts set out in *Vento* are either similar or of a greater sum. Therefore, it is unlikely that the above English guidelines would be simply followed in Singapore.

5.144 Further, it may be possible to claim aggravated damages<sup>369</sup> for injury to feelings in the UK, even though this is not expressly referred to in the statute.<sup>370</sup> Under the Australian HRCA, it is also possible to claim aggravated damages for psychiatric injury and injury to feelings, even though such damages are not specifically referred to in the statute.<sup>371</sup> However, if the factors taken into account are already accounted for under general damages, they cannot be claimed again under aggravated damages.<sup>372</sup>

### C. Criminal compensation

5.145 In cases where criminal proceedings have been commenced against the employer, a compensation order may be awarded by the courts under s 359 of the Criminal Procedure Code (“CPC”).

5.146 Victims may receive compensation under section 359 of the CPC where the offender is convicted. A criminal compensation order is essentially a proxy for civil damages and is viewed by the courts as a shortcut through which an injured victim can recover compensation where a civil suit is an inadequate or impractical remedy.<sup>373</sup> In sum, it is a shortcut to the remedy that the victim could obtain in a civil suit against the offender.

#### i. General principles underpinning criminal compensation

5.147 An order for criminal compensation does not affect a victim's right to bring a civil claim against the offender. The victim may claim for damages beyond the amount of

---

<sup>364</sup> *Vento v Chief Constable of West Yorkshire* [2003] ICR 318 (“*Vento*”).

<sup>365</sup> *Vento* at [65].

<sup>366</sup> The most serious cases, such as where there has been a lengthy campaign of discriminatory harassment on the grounds of sex or race.

<sup>367</sup> Less serious cases, such as where the act of discrimination is an isolated or one off occurrence.

<sup>368</sup> *Simmons v Castle* [2012] EWCA Civ 1039 and 1288 and *De Souza v Vinci Construction (UK) Ltd* [2017] EWCA Civ 879.

<sup>369</sup> *KD v Chief Constable of Hampshire* [2005] EWHC 2550 at [186].

<sup>370</sup> In the UK, aggravated damages may be claimed, for instance, when the defendant has behaved in a “*high-handed, malicious, insulting or oppressive manner*” (*Alexander v The Home Office* [1998] IRLR 190) or, where the actions of the defendant with regards to the way in which the litigation and trial were conducted justify the imposition of such damages.

<sup>371</sup> *Jemma Ewin v Claudio Vergara* [2013] FCA 1311 (“*Jemma Ewin*”) at [676].

<sup>372</sup> *Jemma Ewin* at [676].

<sup>373</sup> *Tay Wee Kiat and Another v Public Prosecutor* [2018] SGHC 114 (“*Tay Wee Kiat 2*”) at [15].

compensation paid under the compensation order. The amounts awarded under a compensation order in criminal proceedings are likely to be less than the amounts awarded in civil proceedings where aggravated and punitive damages may be claimed.

5.148 In *Public Prosecutor v Donohue Enilia* (“*Donohue Enilia*”)<sup>374</sup> and *Soh Meiyun v Public Prosecutor*,<sup>375</sup> several principles underpinning criminal compensation were set out:

- 1) A compensation order does not form part of the sentence, nor is it an alternative to a sentence (i.e. it should not be used as further punishment).
- 2) There must be a causal connection between the offence and the injury, or the loss that is being compensated.
- 3) Compensation ought only to be ordered in cases where the fact and extent of the damage is either proved or agreed readily and easily on the evidence.
- 4) The court should adopt a “broad common-sense approach in assessing whether compensation should be awarded” – compensation will be inappropriate where it requires the determination of complex issues of apportionment of liability.
- 5) The assessment of loss or damage must be based on evidence and not simply on representations by the Prosecution.
- 6) A compensation order must not be oppressive (i.e. accused must have the means to pay compensation).

## ii. Quantum of compensation

5.149 The sums granted by the courts under a compensation order are based on the following heads of damage:<sup>376</sup>

- 1) Pain and suffering caused to the victim;<sup>377</sup>
- 2) Medical expenses incurred by the victim;<sup>378</sup>
- 3) Loss or damage to the victim’s property as a result of the offences; and
- 4) Prospective earnings, i.e., income that the victim would have earned but for her being unemployed pending the investigation and trial of the offences.<sup>379</sup>

In determining how much compensation should be payable, the court must consider both the loss and injury suffered as a result of the crime and the means of the convicted person to pay.<sup>380</sup> In *Donohue Enilia*, then Chief Justice Yong was clear that the assessment of loss or damage must be based on some credible evidence and not simply on the Prosecution’s representations.<sup>381</sup>

### (a) Compensation for medical treatment

5.150 Evidence of treatment or hospitalisation bills will be crucial before a compensation order is made. In the case of *Public Prosecutor v Low Gek Hong*,<sup>382</sup> the judge said that he could not make a compensation order because the prosecution was unable to produce the relevant medical bills to support the computation of the compensation amount.

<sup>374</sup> *Public Prosecutor v Donohue Enilia* [2005] 1 SLR(R) 220 (“*Donohue Enilia*”) at [20]-[27].

<sup>375</sup> *Soh Meiyun v Public Prosecutor* [2014] 3 SLR 299 (“*Soh Meiyun*”) at [56].

<sup>376</sup> *Tay Wee Kiat 2* at [12].

<sup>377</sup> *Public Prosecutor v Foo Chee Ring* [2008] SGDC 298 (“*Foo Chee Ring*”) at [260].

<sup>378</sup> *Public Prosecutor v Fok Jun Hong Johnson* [2016] SGMC 19 at [117].

<sup>379</sup> *Foo Chee Ring* at [260], *Public Prosecutor v Anpalaki Muniandy Marimuthu and another* [2016] SGMC 56 at [176] and *Tay Wee Kiat 2*.

<sup>380</sup> *Donohue Enilia* at [24].

<sup>381</sup> *Donohue Enilia* at [23].

<sup>382</sup> *Public Prosecutor v Low Gek Hong* [2015] SGDC 192 at [103].

**(b) Compensation for loss of earnings**

- 5.151 It will be necessary to provide evidence of the FDW's salary (i.e. a copy of the employment contract, IPA, or a wage slip).<sup>383</sup> In *Public Prosecutor v Tong Chew Wei*, the victim, a domestic worker, received compensation for her loss of earnings before the trial. As a result of the investigation into the offences committed by the defendant, the victim had to remain in Singapore without income for 24 months. The court ordered that S\$6,480 be paid in compensation (being the domestic worker's monthly salary of S\$270 multiplied by 24 months).<sup>384</sup>

**(c) Compensation for pain and suffering**

- 5.152 In the 2018 case of *Tay Wee Kiat v Public Prosecutor* ("*Tay Wee Kiat*"), the court ruled that domestic workers who are subject to abuse should be compensated for pain and suffering. Justice See stated:

"We consider it appropriate to compensate (the victim) for the physical and psychological injuries inflicted by the offenders for which they would have been liable in tort."<sup>385</sup>

- 5.153 Following the dismissal of their appeal, the appellants were ordered to pay compensation of S\$6,000 for the pain and suffering caused to the domestic worker as well as S\$1,800 for loss of earnings. In its submissions on compensation, the Prosecution suggested that the appellants should pay S\$500 for each incidence of abuse taking into account the physical and psychological harm suffered by the domestic worker. The court agreed.<sup>386</sup> The first appellant had abused the victim 10 times and so was ordered to pay S\$5,000 in compensation, whereas the second appellant had abused the victim twice and so was ordered to pay S\$1,000 in compensation.

**(d) Compensation for psychological and physical harm**

- 5.154 The Court in *Tay Wee Kiat*<sup>387</sup> offered some guidance on how courts should deal with FDW abuse cases where the harm suffered is both psychological and physical. The court observed that psychological abuse, in conjunction with physical harm, was what characterized egregious instances of FDW abuse and noted that the psychological harm and mental anguish FDWs can suffer can be just as acute and enduring as physical harm, if not more. The judge noted that the emotional trauma resulting from psychological abuse is therefore a critical sentencing consideration in FDW abuse cases.
- 5.155 The commentary in *Tay Wee Kiat* is consistent with other Singapore cases in which FDW abuse has been considered. In the Court of Appeal case of *Public Prosecutor v Kwong Kok Hing*,<sup>388</sup> the court stated that emotional trauma resulting from psychological abuse was a critical sentencing consideration where the abuse of FDWs is concerned, particularly "*where the abuse is deliberate and relentless*".<sup>389</sup> Further, in *Public Prosecutor v Chong Siew Chin*, Yong CJ (as he was then) stated that "*where mental abuse was calculatedly applied in conjunction with physical abuse to [an FDW], this should be viewed as a serious aggravating factor*".<sup>390</sup>

---

<sup>383</sup> *Soh Meiyun* at [59].

<sup>384</sup> *Public Prosecutor v Tong Chew Wei* [2009] SGDC 202 at [90]. *Foo Chee Ring*, where loss of earnings was awarded to a FDW who was physically abused by her employer. See Appendix 3 for case summaries.

<sup>385</sup> *Tay Wee Kiat 2* at [15].

<sup>386</sup> *Tay Wee Kiat 2* at [19].

<sup>387</sup> *Tay Wee Kiat 1*.

<sup>388</sup> *Public Prosecutor v Kwong Kok Hing* [2008] 2 SLR(R) 684; [2008] SGCA 10.

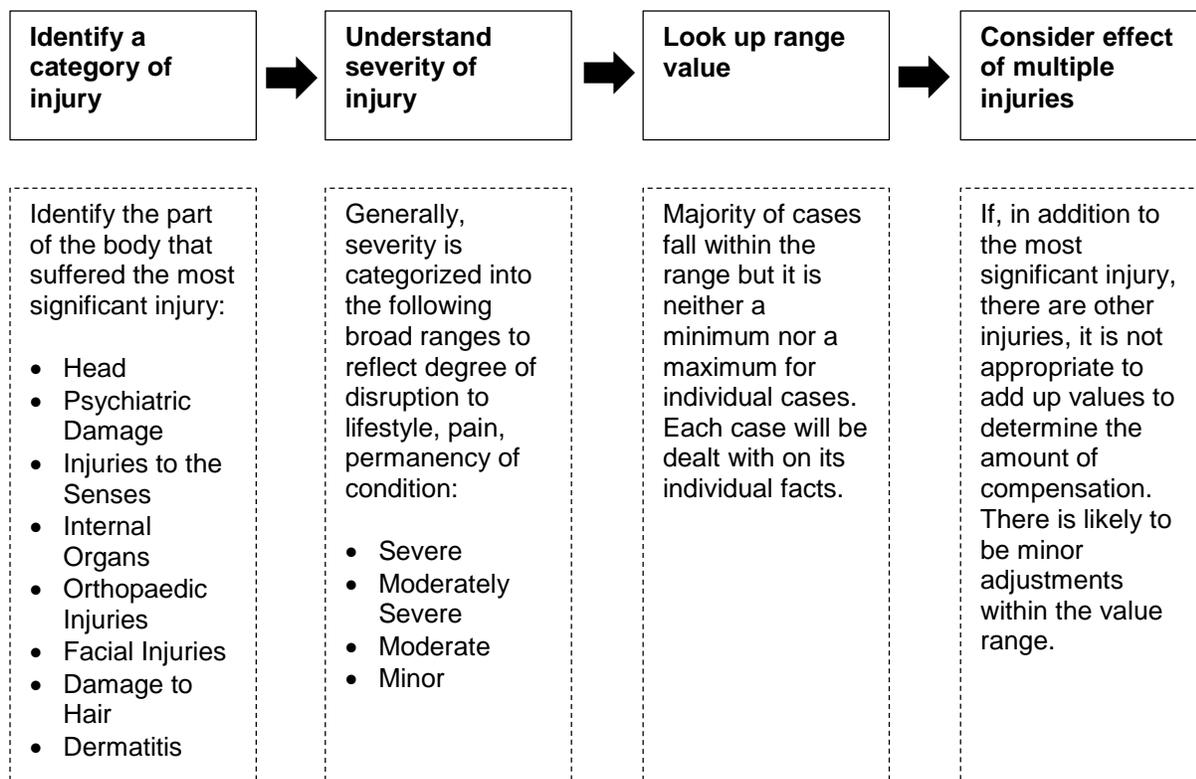
<sup>389</sup> *Tay Wee Kiat 1* at [69].

<sup>390</sup> *Public Prosecutor v Chong Siew Chin* [2001] 3 SLR(R) 851; [2001] SGHC 372 at [42].

## VI. Guidelines for the assessment of general damages in personal injury cases

5.156 The Guidelines contain a list of injuries and related values, distilled from reported cases, to give an indication as to the likely range of compensation for a particular injury. While the Guidelines have been graded to reflect the severity of the injury sustained, it is recognised that even within these grades the actual degree of severity can vary considerably and the same injury can have different consequences for different people.

### Application of the Guidelines



### A. Psychiatric injuries

#### i. General psychiatric injury

5.157 There is a myriad of psychiatric conditions that could result from experiencing a traumatic event, i.e. depression, avoidant phobias, anxiety attacks, etc. They range in severity too, with the most severe psychiatric conditions debilitating a person to the extent that he is unable to cope with the activities of daily life. The factors to be taken into account in valuing claims of this nature are as follows:

- 1) The person's ability to cope with life and work in general as compared to his or her pre-trauma state;
- 2) The effect on the person's relationships with family, friends and those with whom he or she comes into contact with;
- 3) Whether the person is suicidal as a result of his or her psychiatric condition;
- 4) Whether medical help has been sought;

- 5) The extent to which treatment would be successful;
- 6) The extent to which medication affects the person's work and social life;
- 7) Whether the person adheres faithfully to counselling sessions and takes his or her medication;
- 8) The risk of relapse in the future; and
- 9) The chances of full recovery in the future.

**Table 9: Severity of psychiatric harm and corresponding damages**

<b>Level of harm</b>	<b>Explanation of classification</b>	<b>Damages</b>
Severe	The person suffers from marked problems with respect to factors (1) to (6). Despite treatment, the prognosis remains very poor as the person is unlikely to be able to return to employment permanently or even take charge of his daily affairs.	<b>S\$25,000 to S\$55,000</b>
Moderately severe	There are significant problems associated with factors (1) to (6) above but the prognosis will be much more optimistic than in "Severe" above. However, the person may still have long-term problems coping with the stressors of work life and the demands of social life thus preventing a return to pre-trauma employment. He is however, able to perform the activities of daily life independently.	<b>S\$8,000 to S\$25,000</b>
Moderate	In cases of moderate severity, the person experiences problems associated with factors (1) to (6) above. However, he shows marked improvement with treatment. Prognosis is good for this category.	<b>S\$3,000 to S\$8,000</b>
Minor	In this category, full recovery is achieved within a short period of time and the risk of relapse in the future is small. The person is able to return to previous employment with little or no residual disabilities. The level of the award takes into consideration the relatively short length of the period of disability and the extent to which daily activities and sleep were affected.	<b>S\$1,000 to S\$3,000</b>

**ii. Post-traumatic stress disorder**

5.158 The Guidelines define post-traumatic stress disorder (“PTSD”) as a severe anxiety disorder that develops after exposure to a traumatic event. Formal diagnostic criteria (DSM-IV and ICD-9) require the symptoms to last more than one month and there is significant impairment in all aspects of a person’s life. Some of the symptoms of PTSD include: recurrent flashbacks, persistent nightmares, avoidance, and hyperarousal.

**Table 10: Severity of PTSD and corresponding damages**

<b>Level of harm</b>	<b>Explanatory notes</b>	<b>Damages</b>
Severe	In cases where the person suffers from severe PTSD, the effects are debilitating. He is unable to cope with daily life due to recurrent flashbacks and he is also tense and angry (hyperarousal) despite treatment. As a result, he is unable to gain employment. Prognosis is poor and the symptoms are likely to persist on a long-term basis.	<b>S\$25,000 to S\$50,000</b>
Moderately severe	This category is distinct from “Severe” because of better prognosis. However, the effects are still likely to cause significant disability for the foreseeable future and the chances of the person being employed in his pre-trauma job is low.	<b>S\$10,000 to S\$25,000</b>
Moderate	Recovery in cases of moderate severity is good. Although there are symptoms still persisting on a long-term basis, the person is able to cope with the demands of daily life and is likely to gain employment. However, he may not be able to cope with the demands of his pre-trauma occupation and may only be capable of a job that is less stressful.	<b>S\$4,000 to S\$10,000</b>
Minor	Full recovery is achieved within one or two years with only minor symptoms still persisting. Prognosis is good.	<b>S\$2,000 to S\$4,000</b>

**iii. Chronic Pain Syndrome**

5.159 Chronic Pain Syndrome (“CPS”) often develops after the person experiences acute pain such as an injury. CPS is defined as pain that lasts for longer than the expected time for recovery of the injured tissue, muscle, or bone. The normal healing period generally takes three months.

**Table 11: Severity of CPS and corresponding damages**

<b>Level of harm</b>	<b>Explanatory notes</b>	<b>Damages</b>
Severe	No explanation given in the Guidelines.	<b>S\$20,000 to S\$35,000</b>
Moderately severe		<b>S\$10,000 to S\$20,000</b>
Moderate		<b>S\$5,000 to S\$10,000</b>

**iv. Reflex Sympathetic Dystrophy**

5.160 Reflex Sympathetic Dystrophy is a chronic progressive disease that is characterised by severe pain, swelling, and changes in the skin. Moving or touching the limb (or affected area) often results in intolerable pain and the said pain is heightened by emotional stress. As a result, the injured person does not move or use the affected limb and eventually, the skin, muscle, and bone atrophy from disuse. In mild cases, the person recovers spontaneously within a few months with no lasting disabilities.

**Table 12: Severity of Reflex Sympathetic Dystrophy and corresponding damages**

<b>Level of harm</b>	<b>Explanatory notes</b>	<b>Damages</b>
Severe	No explanation given in the Guidelines.	<b>S\$25,000 to S\$50,000</b>
Moderately severe		<b>S\$12,000 to S\$25,000</b>
Moderate		<b>S\$5,000 to S\$12,000</b>

**v. Somatoform Disorder**

5.161 Somatoform Disorder is a mental disorder that manifests itself in physical symptoms which mimics physical disease or injury of which there is no identifiable cause. The Guidelines state that damages awarded for this type of harm should be in the region of S\$22,000.

## 6. ILLEGAL DEPLOYMENT

### I. Introduction

- 6.1. Employers are only permitted to have their FDWs perform household and domestic duties in the location provided for in their work permit or any other residential address approved by the Controller.<sup>391</sup> A narrow exception to this rule exists to allow employers to place their FDWs at another address during daytime for the limited purpose of taking care of their young children or elderly parents.<sup>392</sup> In reality, however, it is not uncommon for employers to make their FDWs perform tasks beyond these permissible duties and locations. Employers found to be illegally deploying their FDWs in these ways will be fined.
- 6.2. FDWs have been found to be illegally deployed where employers sent them to perform non-domestic chores at their family shops,<sup>393</sup> massage parlours,<sup>394</sup> and even across the border to Johor Bahru to take care of cats.<sup>395</sup>
- 6.3. Thus, it is clear that employers who illegally deploy FDWs are flouting Singapore law and can therefore be prosecuted.<sup>396</sup>
- 6.4. While legal action can be pursued against such errant employers, FDWs often also pay the price. Many, if not most in these situations receive no compensation for the additional work they were required to do. Others, aware that their deployment is illegal, work in fear of getting into trouble with the authorities.
- 6.5. As of this printing, the law is not settled on whether FDWs are entitled to compensation for work they are made to do beyond the scope of their work permits. The section below therefore offers suggestions for legal practitioners to consider when representing FDWs who faced these situations.

### II. Claims that can be brought for compensation for work done by Foreign Domestic Workers during their illegal deployment

- 6.6. An FDW who has been illegally deployed may be able to bring a claim in unjust enrichment on a *quantum meruit* (as much as she has earned) basis. Unjust enrichment is premised on the idea of a defendant receiving a benefit from the claimant, to the claimant's detriment. The employer is unjustly enriched when he/she benefit from the work of an FDW, but does not pay her. Unjust enrichment is not rooted in a contract, and has nothing to do with terms agreed between an FDW and her employer. Rather, it is rooted in the concept of restitution: compensation for injury or loss.

---

<sup>391</sup> EFMA s 5(3) and EFMR s 4(2) read with s 3, Part II, Fourth Schedule.

<sup>392</sup> MOM website, "Employment rules for foreign domestic workers" <<http://www.mom.gov.sg/passes-and-permits/work-permit-for-foreign-domestic-worker/employers-guide/employment-rules>> (accessed 5 September 2018).

<sup>393</sup> *Public Prosecutor v Lim Hong Kheng* [2006] SGMC 7 ("*Lim Hong Kheng*").

<sup>394</sup> Koh Hui Theng, "Maid had to sleep in employer's massage parlour after cleaning it", *The New Paper* <<http://www.fcmaid.com.sg/useful-info/58-maid-had-to-sleep-in-employer-s-massage-parlour-after-cleaning-it>> (accessed 8 May 2018).

<sup>395</sup> Amelia Tan and Joanna Seow, "Woman fined \$34k for not paying maid and deploying her illegally; Domestic helper made to go to JB to look after cats owned by boss' mum", *The Straits Times* <<http://www.asiaone.com/singapore/woman-fined-34k-not-paying-maid-and-deploying-her-illegally>> (accessed 8 May 2018).

<sup>396</sup> See *Lim Hong Kheng*.

- 6.7. Unjust enrichment requires the claimant to come to the court with “clean hands”,<sup>397</sup> i.e., the FDW must normally not be aware of the illegality of her deployment. However, an FDW’s knowledge of the illegality alone may not bar her from bringing the claim<sup>398</sup> given the unequal bargaining power inherent in the relationship with her employer which results in the FDW usually having little choice but to comply with the instructions. Indeed, Singapore courts have been sympathetic towards the plight of FDWs made to work in these situations. They have recognised the “vulnerable position” of an FDW, and considered it to be<sup>399</sup> an important factor in determining her blameworthiness in an offence.
- 6.8. It is thus possible that the court will find that the FDW came to court with “clean hands”, given the relatively greater fault of the employer

### III. Remedies

- 6.9. When assessing the value of a restitutionary claim in these instances, lawyers may begin with the objective market value of the services that the FDW rendered, referring to the price which a reasonable person in the employer’s position would pay for the services.<sup>400</sup>
- 6.10. Potential factors considered in assessing the quantum at this stage are the availability and cost of similar services, the rates and practices in the relevant market, as well as the relevant characteristics of the defendant.<sup>401</sup> Conditions which affect the objective value of the benefit to any reasonable person in the same position as the employer may also be taken into account.<sup>402</sup>
- 6.11. Where the FDW is made to work for the employer’s business, economic benefits are reaped by the employer. In cases like this, a useful reference point in quantifying the value of the worker’s claim would be the market rate for part-time services the FDW performed at the business.
- 6.12. Where non-economic benefits are reaped,<sup>403</sup> the value of the work done by the FDW would be calculated using the market rate for the part-time provision of the service in question (e.g., by a cleaner or care worker) on a pro-rated basis.

---

<sup>397</sup> *Ong Lu Ling v Tan Ho Seng* [2018] SGHC 65 at [11], *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and others and another appeal* [2012] 1 SLR 32 at [113].

<sup>398</sup> Knowledge of illegality of her actions, however, could then take her out of the scope of protection from prosecution if she had not been coerced or compelled to work illegally by her employer but instead took on the illegal work freely.

<sup>399</sup> *Lim Hong Kheng* at [77].

<sup>400</sup> *Benedetti v Sawiris* [2013] UKSC 50 at 956.

<sup>401</sup> Such as her age, occupation and state of health.

<sup>402</sup> For example, the purchasing power of the employer. See *Benedetti v Sawiris* [2013] UKSC 50 at 957.

<sup>403</sup> Such as where the FDW cleans the house of the employer’s relative.

## 7. OVERCHARGING OF AGENCY FEES

- 7.1. The overcharging of agency fees is a widespread and common issue that has unfortunately, only grown in prevalence.<sup>404</sup>
- 7.2. The maximum amount of agency fees that a local employment agency can charge an FDW is one month's salary for each year of the period of the contract of employment.<sup>405</sup> For the usual two-year contract, the maximum amount that local agencies can charge the FDWs is two months' salary.<sup>406</sup> However, if the employer terminates the FDW's employment within 6 months of commencement of work, the agency must refund at least 50% of the agency fees charged,<sup>407</sup> unless the period of employment contracted for was 6 months, or where the FDW requested for termination.<sup>408</sup>
- 7.3. Most FDWs in Singapore do not know the statutory limit for the amount of placement fees that employment agencies can charge. This is because it is common practice for otherwise legitimate employment agencies to charge up to eight months' worth of the FDW's salary.
- 7.4. In such cases, a contractual claim against the employment agency may be hard to make out given the lack of privity between the FDW and the employment agency. In most cases, while there would be a signed contract between the FDW and her employer, as well as one between the employer and the employment agency, there is no such contract between the employment agency and the FDW.
- 7.5. Outside of contractual remedies, the FDW can seek to claim the fees she paid in excess of the statutorily prescribed limit by filing a claim in the SCT<sup>409</sup> or seeking restitution against her employer or her agency.<sup>410</sup>
- 7.6. To make out a claim in restitution, the FDW must show that: (i) the employment agency has been enriched, (ii) the enrichment is unjust and (iii) the enrichment is at the expense of the FDW.
- 7.7. In cases of overcharging, the unjust factor that the FDW would need to establish is that she was operating under a mistake of law. The FDW would have to prove that (i) the mistake was made and that (ii) she would not have paid the money if she did not make the mistake.
- 7.8. Requirement (i) should generally not pose much of an issue for an FDW seeking to claim for over-charged fees. This is especially since most FDWs reasonably trust that these licensed and regulated agencies would not break the law.<sup>411</sup> Requirement (ii) is also likely to be fulfilled. It is hard to conceive of a situation where an FDW would have paid more than she is required to if she was aware of the statutory limits.
- 7.9. Alternatively, the FDW can seek to establish that the enrichment was unjust by proving that she was operating under a unilateral mistake as to the terms of her contract. Here, the

---

<sup>404</sup> Seow Bei Yi, "Parliament: 23 errant agencies rapped for overcharging foreign workers in fees" *The Straits Times* (10 September 2018) <<https://www.straitstimes.com/politics/parliament-23-errant-agencies-rapped-for-overcharging-foreign-workers-in-fees>>.

<sup>405</sup> Employment Agencies Rules r 12(1)(a).

<sup>406</sup> Employment Agencies Rules r 12(1)(a).

<sup>407</sup> Employment Agencies Rules r 13(1).

<sup>408</sup> Employment Agencies Rules r 13(1).

<sup>409</sup> For more details on how to submit a claim to the SCT, see Chapter 1, Section 4(IV)(C) "Bringing a claim to the Small Claims Tribunal".

<sup>410</sup> The availability of evidence showing where the illegal deductions went to, and an assessment by the lawyer assisting in the FDW's case will determine who the FDW will claim against ultimately.

<sup>411</sup> It was found that the mistake was made. The respondent (claimant) had always been under the impression that the appellant's demands were lawful.

FDW mistakenly pays more out of her monthly salary than she should due to being uninformed about the statutory limits.

- 7.10. There are three elements required to prove unilateral mistake: (i) the mistake must relate to terms of the contract, (ii) the mistake must be fundamental and (iii) the non-mistaken party must have actual knowledge of the error made by the mistaken party.<sup>412</sup>
- 7.11. In a typical scenario of overcharging, there is a good chance that the FDW will be able to prove that she was operating under a unilateral mistake. Firstly, it is plain that the mistake relates to contractual terms regarding the salary payable to the FDW during her period of employment. Secondly, the mistake is fundamental on the part of the FDW as she would have agreed to give up between two to four times the amount of her salary than she is supposed to under the law. Finally, an agency would and should be aware of the laws that regulate its entire business and practice, especially for something as important as agency fees. Accordingly, the agency would be deemed to have had knowledge of its illegal actions, claims of ignorance notwithstanding.<sup>413</sup>
- 7.12. Therefore, if sufficient evidence can be collected, it is likely that the FDW would be able to make a successful claim in unjust enrichment and would be able to recover the fees she paid to the agency (whether directly or indirectly) in excess of the statutorily prescribed limit.

---

<sup>412</sup> *Chwee Kin Keong and others v Digilandmall.com Pte Ltd* [2005] 1 SLR(R) 502 (“*Chwee Kin Keong*”) at [31]-[35].

<sup>413</sup> Courts have found that there was actual knowledge where the non-mistaken party was guilty of “wilful blindness”, a situation where a person *intentionally* keeps him or herself unaware of certain facts or laws. *Chwee Kin Keong* at [42].

## 8. EVIDENCE

- 8.1. Evidence forms the bedrock upon which civil litigation takes place. Therefore, the extent to which an FDW's civil claim against her former employer or employment agency may succeed is heavily dependent on the quality and type of evidence she is able to produce. The evidence that an FDW can look to collect includes official documents, such as employment contracts and agency agreements, as well as less formal types of evidence, such as photographs, records of conversations (e.g. text messages), and journal entries kept by the FDW while working under her employer. The latter types of evidence may be especially important, as their contemporaneous nature can bolster the reliability of the FDW's factual accounts.
- 8.2. However, the collection of evidence can often be difficult for FDWs. For example, the journals or photographs collected by an FDW may be confiscated or destroyed by her employer so as to deter the FDW from mounting a claim. Others may not have access to the relevant documents, such as their employment contracts, payslips and medical reports.
- 8.3. This section considers the types of documentary evidence that would be useful for the FDW when pursuing a civil claim. Where relevant documents relating to the FDW's personal information are kept in the hands of third parties, the Personal Data Protection Act ("PDPA") can be relied on to compel these third parties to release such documents to the FDW.<sup>414</sup> This section thus also explores how the PDPA can be utilised to the FDW's benefit. The section concludes by discussing other practical considerations relating to the collection of evidence.

### I. Types of evidence

- 8.4. This section will identify documents that should be collected by the FDW prior to bringing a claim. Where requests for access need to be made to third parties, section 21 of the PDPA may be relied on to compel the other party to respond to such requests.

#### A. Key identifying information of the defendant

- 8.5. The name, address, and identifying information (NRIC or ACRA number) of the employer or employment agency are needed in order to pursue civil litigation against them. Without this information, it would not be possible to serve a letter of demand or a writ. However, it should be noted that in certain cases, it might be possible to make an application for substituted service where attempts at personal service have been futile.<sup>415</sup>
- 8.6. The following information is required where the target is an individual:
  - 1) Full name;
  - 2) Address; and
  - 3) NRIC Number.

---

<sup>414</sup> Personal Data Protection Act 2012 (GN No. 26/2012) ("PDPA").

<sup>415</sup> States Courts Practice Directions, Rule 12; Supreme Court Practice Directions, Rule 33.

- 8.7. The following information is required where the target is a corporate entity:
- 1) Registered name;
  - 2) Registered address;
  - 3) UEN or ACRA number; and
  - 4) Service information.
- 8.8. Such information may be found on contracts, immigration documents or fee agreements. Alternatively, if some identifying information is known, various databases can be used to search for additional information.

**Table 13: Databases to obtain information**

Known information	Additional information available from database	Cost of retrieving additional information
<b>For corporate entities (such as agencies or construction companies)</b>		
Name of corporate entity	Registered address, UEN/ACRA number, status, and compliance rating for annual filing available from ACRA's Entity Search ( <a href="https://www.tis.bizfile.gov.sg">https://www.tis.bizfile.gov.sg</a> ).	Free
Name of corporate entity	Company's share capital, officers and shareholders available upon purchase of its business profile from ACRA's iShop ( <a href="https://www.tis.bizfile.gov.sg">https://www.tis.bizfile.gov.sg</a> ).	S\$5.50 per report
NRIC/Passport/FIN number of a person involved in a corporate entity	Information about the business involvements of a person such as all the business entities that a person is involved in, his roles in these entities, and the status of these entities are available upon purchase of a People Profile from ACRA's iShop ( <a href="https://www.tis.bizfile.gov.sg">https://www.tis.bizfile.gov.sg</a> ).	S\$33 per report
<b>For individual employers (usually in a case involving domestic workers)</b>		
Name of individual employer's spouse	Name of spouse available from the Registry of Marriages website ( <a href="https://www.rom.gov.sg/emrs/rom_emrs_cpmtty_start.asp">https://www.rom.gov.sg/emrs/rom_emrs_cpmtty_start.asp</a> ).	SingPass users can search for marriage records up to two times for free.  Non-SingPass users have to pay S\$35.
Address of individual employer	If the employer owns the property, the name of the employer would be available from the Land Titles Registry upon purchase of property ownership information ( <a href="http://www.sla.gov.sg/inlis/#1">http://www.sla.gov.sg/inlis/#1</a> ).	S\$5.25

## **B. Employment contract**

- 8.9. The employment contract is the foundational document for a breach of contract claim. The contract generally specifies the contracting parties, the salary, the number of rest days, how untaken rest days and holidays are compensated, the amount and duration of deductions for agency fees or other loans, amongst others. If the FDW has signed multiple contracts, all of them should be collected if possible.
- 8.10. If the FDW does not have a copy of the contract, the local caseworker assisting her or her legal representative in Singapore may:
- 1) Request copies of the client's employment contract(s) from employers and employment agencies in writing, possibly relying on s 21 of the PDPA;
  - 2) Contact the Singapore Ministry of Manpower's Controls Compliance and Levy Department, Work Pass Division; or
  - 3) Approach the relevant foreign embassy in Singapore for assistance.<sup>416</sup>
- 8.11. Where option (1) is the route taken, it might be helpful for the lawyer to approach the party who the FDW does not intend to claim against. For example, where the action is commenced against the FDW's employer, a possible course of action would be to approach the FDW's employment agency for the relevant contract, seeking the latter's cooperation and making it clear that no claims would be brought against them.
- 8.12. Meanwhile, partners from the FDW's home country can assist in bolstering an FDW's claim by obtaining documents located in her home country. Obtaining the FDW's placement agreement, for example, could assist the FDW in establishing a claim for the overcharging of agency fees.
- 8.13. For FDWs who hail from Indonesia, home country partners may obtain their documents by approaching the Ministry of Foreign Affairs and other public agencies<sup>417</sup> in Indonesia under Indonesia's Public Information Disclosure Act. Typically, home country partners can also write to BNP2TKI, a government agency,<sup>418</sup> to request for the relevant documents.

## **C. In-Principle Approval**

- 8.14. The In-Principle Approval ("IPA") is a letter issued by the Ministry of Manpower to the employer once the FDW's work permit application is approved. It provides the material terms of the employment (such as the starting date and the salary components), as well as the identifying information of the employer. Where an FDW has not been paid according to the salary rate as declared in the IPA, these terms may form the basis for a FDW to bring a claim for unpaid wages.

## **D. Entrance medical examination**

- 8.15. The entrance medical examination may provide useful comparison between the medical condition of the FDW prior to and at the end of employment. This would substantiate a claim that the FDW has not been provided with sufficient food by her employer, which is an issue routinely encountered by caseworkers.

---

<sup>416</sup> Where the FDW intends to return to her home country, she should still approach the relevant embassy in Singapore before she leaves.

<sup>417</sup> Public agencies include the Ministry of Manpower and regional departments of labour.

<sup>418</sup> Home country partners can also write to BP3TKI, the regional version of BNP2TKI.

## **E. Agency fee agreements**

- 8.16. Agency fee agreements in writing would typically provide a clear record of the fee amount and the service(s) provided, and can then be compared with the relevant law (in Singapore and/or the home country) to determine if the fee agreement is legal. As a written agreement can be strong evidence of a contractual relationship, such documents may also provide a clear basis to sue an agency, which has violated the law.

## **F. Medical reports and records**

- 8.17. Medical records can help to establish injuries and harm suffered by the FDW, as well as show out-of-pocket damages. They may also include statements made by the FDW immediately after the injury or harm.
- 8.18. Depending on the hospital, there may be different types of medical records that can be requested. One may request for duplicate copies of medical certificates, an ordinary medical report, or a specialist medical report. A specialist medical report is a medical report that includes the doctor's opinion on the prognosis of the patient's medical condition.
- 8.19. Medical records may be retrieved at the serving hospital. The hospital's website will generally set out the process for making a request and will likely require that the client sign and submit a consent form. Medical records generally cost S\$200 to S\$500.
- 8.20. If the hospital does not release the medical records upon the client's request and is a private hospital, the practitioner may alternatively submit a request for all "personal information" of the FDW under s 21 of the PDPA.

## **G. Police reports**

- 8.21. A police report typically provides a summary of the facts regarding the relevant incident(s) complained of, the names of witnesses, identifying details of the perpetrator, and the FDW's statement.
- 8.22. SingPass users may request a police report.<sup>419</sup> The requestor's company particulars and the client's particulars must be provided when making the request. Also required are the incident details (e.g. nature of offence, date and time of incident) and the report/IP number. There is a non-refundable search fee of S\$14 payable at the point of application, and additional document fees upon successful retrieval.

## **H. Closed circuit television (CCTV) footage**

- 8.23. If some or all of the events underlying the FDW's case took place in the view of a CCTV camera, the CCTV evidence may be critical in supporting the FDW's version of the facts.
- 8.24. A request can be made to the manager of the property where the CCTV camera is located for all "personal data" about the FDW that is in their possession, pursuant to s 21 of the PDPA. The request should be reasonably specific in time and location to prevent the request from being legally rejected for being too burdensome for the organisation.

---

<sup>419</sup> Singapore Police Force website "Certified true copy of police report" <<http://www.police.gov.sg/e-services/apply/certified-true-copy-of-police-report>>

- 8.25. Any delay in making the request should be kept to a minimum as many CCTV operators overwrite the footage on a regular (often 30 days) basis.

#### **I. Records from administrative proceedings**

- 8.26. If the FDW had previously appeared before the Ministry of Manpower (“MOM”) for administrative proceedings and/or for negotiations facilitated by MOM, these records may show the types of claims presented to MOM, statements made by the FDW, the employer or agent, the alleged salary amounts and payments, and the resolution (if any). There may also have been a settlement agreement.
- 8.27. A request for such records can be made to the Employment Standards Branch Foreign Manpower Management (Well-Being), Department Ministry of Manpower Services Centre situated at 1500 Bendemeer Road Singapore 339946.

#### **J. Bank or wire transfer statements**

- 8.28. Bank or wire transfer statements may be useful to prove the transfer of funds (or lack thereof). The FDW or lawyer can request (generally, in writing) copies of financial statements from the Singapore bank or the wire transfer company. If the FDW or her representative is in Indonesia, they may also go to the bank in Indonesia (with the client’s ID and passbook) and request bank statements.<sup>420</sup> There may be a small fee for the requests or any subsequent photocopying.

## **II. How to collect evidence pursuant to the Personal Data Protection Act**

### **A. Relevance of the Personal Data Protection Act**

- 8.29. The PDPA was enacted in 2012 to govern the collection, use and disclosure of personal data. The PDPA seeks to recognise an individual’s right to protect his/her personal data, as well as the need for organisations to collect, use and disclose personal data for purposes that a reasonable person would consider appropriate in the circumstances.
- 8.30. Personal data is defined in the PDPA as follows: “Data, whether true or not, about an individual who can be identified –
- 1) From that data; or
  - 2) From that data and other information to which the organisation has or is likely to have access.”<sup>421</sup>
- 8.31. Much of the personal data (as defined in the PDPA) of FDWs is collected prior to and during their employment. Prior to her employment, the FDW is required to provide, amongst other things, her personal identification number, contact details and educational certifications to the employment agencies. The collection, access and disclosure of documents relating to such personal data by the FDWs’ employers or the relevant agencies is regulated by the PDPA, under which, the FDW is legally entitled to these documents.

---

<sup>420</sup> Where the FDW has access to e-banking services, transaction records can also be accessed online.

<sup>421</sup> PDPA s 2.

## **B. Requesting access to documents pursuant to the Personal Data Protection Act**

- 8.32. The PDPA establishes a legal right for an individual to approach an organisation directly for access to his or her personal information that has been given to the organisation. The organisation is obligated to respond to such a request by either providing or denying access to such information. This should be done as soon as reasonably possible, with a suggested period of 30 days provided by the Personal Data Protection Commission (“PDPC”) Advisory Guidelines on Key Concepts in the PDPA. If the organisation is unable to respond to the request within 30 days, it should inform the individual in writing of the time by which it would be able to do so.
- 8.33. For FDWs who have returned to their home countries but wish to commence civil proceedings against their former employers or employment agencies, their lawyers may submit an access request to their employer or employment agency on their behalf. A sample template of a PDPA request is included at Appendix 10.<sup>422</sup>
- 8.34. It should be noted that there are some mandatory exceptions stipulated in the PDPA relating to situations where an organisation must not provide access. In the context of FDWs, a relevant exception would be the exception concerning data collected, used or disclosed without consent for the purposes of an investigation, if the investigation and related proceedings are incomplete. For example, there may be ongoing investigations where criminal charges are brought against an FDW or her employer. If so, access to the documents relevant to the investigations may be legally denied.
- 8.35. Thus, in principle, the evidentiary difficulties faced by FDWs can be surmounted with the PDPA so long as the exceptions to access are not applicable. However, in practice, the employer or employment agency may simply deny, or worse still, ignore such requests. If so, the next possible recourse would be to approach the PDPC.
- 8.36. It should also be noted that in some cases, the employer or employment agency might no longer have the information requested. This could be due to such information being deleted or destroyed, or an inability to track the information requested, perhaps due to a changing of databases.

## **C. Approaching the Personal Data Protection Commission**

- 8.37. If the organisation denies an individual’s request for access to personal data, an application for a review of the organisation’s decision can be made to the PDPC. Should the PDPC decide to take up the review, it will then investigate whether the organisation had appropriate grounds to refuse access. Following its investigation, the PDPC may confirm the denial of access or direct the organisation to provide access to the personal data requested.
- 8.38. While the PDPA does not explicitly provide for a situation where an organisation ignores the access request, a similar application for review can likely be made to the PDPC, given the generality of the wording in s 29(1) of the PDPA, as well as the PDPC Advisory Guidelines on Enforcement for Data Protection Provisions. While the PDPC is, in theory, empowered to direct an organisation to respond to an access request, it is unclear in what circumstances the PDPC will do this.
- 8.39. Should the PDPC decide to issue a direction to the organisation following its review, the direction can be registered in the District Court so as to take the force and effect of an

---

<sup>422</sup> Caseworkers should seek the advice of lawyers they work with in determining the exact form of such a request.

original order from the court. This would likely have more compelling force for employers or employment agencies that repeatedly refuse to accede to access requests without valid reasons.

- 8.40. As an alternative, s 32 of the PDPA allows the FDW to claim against the organisation in civil court for an injunction, damages, and/or other relief.<sup>423</sup> The claim is contingent on the FDW suffering “loss or damage directly as a result of a contravention” by the organisation.<sup>424</sup>
- 8.41. Thus, with the enactment of the PDPA, the issue of FDWs not having physical possession of the necessary documents should no longer deter FDWs from bringing claims against their employers or employment agencies. FDWs can directly approach their employers or the relevant organisations for such data, failing which they can look to the PDPC for help. However, this hinges on the PDPC’s effectiveness in enforcing its data access provisions where necessary. Since the PDPC is relatively new, it remains unclear how it can enforce the obligations under the PDPA.

### **III. Practical considerations**

- 8.42. The process of evidence collection is often challenging for FDWs. As economic migrants, FDWs often find themselves quickly relocated to different countries, making it difficult for them to obtain evidence from the country in which they would like to pursue a claim. Moreover, in cases of abuse, the FDW is unlikely to have the emotional capacity, time or presence of mind to carefully gather potentially useful evidence for the purposes of supporting a civil claim. In some extreme cases, the FDW might go to the extent of destroying any evidence that they had previously collected.
- 8.43. It is therefore useful for FDWs to get into the habit of keeping important documents and a record of their daily activities (in a small journal or their mobile phone) in an easily accessible location. In cases of physical abuse, for instance, some record of the dates of abuse by the employer and photos of injuries sustained would help establish the frequency and extent of abuse suffered by the FDW, thereby strengthening their claim.

#### **A. Evidence from abroad**

- 8.44. When physical evidence<sup>425</sup> is located overseas, i.e. in the FDW’s home country, it becomes more difficult for the Singapore practitioner to access it. The long distances and possible relative inefficiencies of certain organisations in the FDW’s home country make it harder for the Singapore practitioner to follow up with requests for information. Also, overseas institutions may work differently from those in Singapore, and Singapore practitioners who are unfamiliar with the institution and/or language and cultural practices of the home country may face challenges in obtaining the information they seek. Reliable partner organisations in the FDW’s home country thus play a key role in evidence collection by facilitating requests for documents and corresponding with overseas agencies such as government institutions and recruitment agencies.<sup>426</sup> For example, a partner organisation can assist in obtaining an Indonesian FDW’s employment contract(s) from the Director of Placement at BNP2TKI (an Indonesian government agency that provides help to migrant

---

<sup>423</sup> PDPA s 32(3).

<sup>424</sup> PDPA s 32(1).

<sup>425</sup> Such as personal bankbooks, payments slips, or other vital information.

<sup>426</sup> For more information on liaising with local partners, see Chapter 3, Section 3 “Help from local partners”.

workers), or, for a Filipino FDW, the business location of a Filipino recruitment agency from the Philippine Business Registry.

- 8.45. Poor connectivity and other telecommunication problems can make it difficult to obtain an FDW's oral statement after she has returned to her home country. Calls to FDWs located in remote areas would thus have to be arranged ahead of time, so that they can travel to a location with better telecommunication signal. Again, the help of a local partner organisation would make it easier for the Singapore practitioner to keep in touch with the FDW in case any further oral statements have to be taken from her, or if she has additional information to offer as evidence. These organisations can meet with the FDW in person to collect her statement, or can serve as a convenient point of contact for the FDW to pass on any information.<sup>427</sup>
- 8.46. Therefore, the collection of evidence from overseas would likely require additional time and resources.

## **B. Sufficiency of evidence**

- 8.47. Any evidence collected to bolster the FDW's claim does not have to be perfect. In contrast to a criminal case, where the standard of proof is beyond reasonable doubt, the FDW's civil claim need only be proven on a balance of probabilities. Should there be insufficient contemporaneous documentary evidence, another viable alternative is to adduce oral evidence via witness testimony. The court will consider the totality of the evidence presented, rather than looking only at the strength of a single piece of evidence.

---

<sup>427</sup> For more information on the communication help that a local partner can offer, see Chapter 3, part 3(I) "How a local partner can help".

## **CHAPTER THREE**

### **PRACTICAL CONSIDERATIONS FOR CROSS BORDER CLAIMS**

## CHAPTER 3: PRACTICAL CONSIDERATIONS FOR CROSS BORDER CLAIMS

### 1. REMOTE REPRESENTATION

- 1.1 One of the biggest concerns when pursuing a cross border claim in Singapore is that FDWs are unable to physically appear in court.<sup>428</sup> However, the FDW need not always appear in person. The tool of remote representation allows the FDW to continue pursuing her case without being physically present in Singapore. This is generally achieved with the help of the FDW's lawyer and through the use of technology.
- 1.2 This section first looks at how practitioners can prepare for remote representation before the FDW leaves Singapore. Then, for FDWs who have left Singapore, two alternatives to the physical appearance in court are considered – namely through video conferencing and the filing of affidavits.

#### I. For Foreign Domestic Workers who have not left Singapore

- 1.3 Legal practitioners should conduct as much case preparation as possible prior to the FDW's departure from the host country. Where possible, practitioners should attempt to complete the following before the FDW leaves Singapore.

##### A. Obtain relevant information in the client's destination

- 1.4 Practitioners should obtain as much contact information from the FDW to ensure that they can stay in touch. Such information can include:
- 1) Home country mobile phone number(s);
  - 2) Facebook username(s);
  - 3) E-mail address(es);
  - 4) Home country residential address;
  - 5) Address and phone number of family members;
  - 6) Notification of any plans to move within their home country or to migrate; and
  - 7) Contact information of a friend in Singapore.

##### B. Explain and provide a written copy of the expected next steps and overall course of the litigation

- 1.5 Before an FDW leaves Singapore, the practitioner should brief her about the current progress of her case and future steps to be taken. Where possible, a written outline of her case should be provided to the FDW in both English and her native language. This serves as a common reference for the FDW and for partners in the FDW's home country (referred to also as "home country partners") regarding the progress of the case, thus minimizing miscommunication between parties. Additionally, this helps the FDW remember what she has to do when she returns home, or any important dates in her case. Keeping the FDW in the loop will encourage her to remain involved in the case.

---

<sup>428</sup> Order 35 r 1 of the Rules of Court provides serious consequences for parties who do not appear for certain court hearings. For example, judges may start the trial without the missing party, make a summary judgment, or dismiss the claim.

### C. Complete procedures that require the Foreign Domestic Worker’s presence

- 1.6 Once the FDW leaves Singapore, she is no longer able to avail herself of the adjudication process provided by the Ministry of Manpower (“MOM”). On the other hand, pursuing civil claims from abroad only requires the FDW’s physical presence under certain conditions. The following table broadly outlines the legal avenues available to the FDW and the steps in each procedure, which require the FDW’s presence.<sup>429</sup> In all cases, FDWs should sign a letter of engagement (“LOE”), authorizing the lawyer to act on her behalf. In signing an LOE, the lawyer and FDW agree that the lawyer acts for the FDW alone but the lawyer still needs to get the FDW’s consent before taking certain actions.

**Table 14: Procedures and steps requiring the presence of the FDW**

Type of procedure	Steps requiring FDW’s presence
MOM adjudication procedure	The FDW must remain in Singapore until adjudication is finalized or until a settlement is entered. Mediation or adjudication cannot be continued after the FDW leaves Singapore.
Worker’s injury claim under WICA	The FDW must usually obtain a medical certificate from a licensed Singaporean hospital.
Civil claim (Contract, tort, etc.)	The presence of the FDW is not required. However, all relevant evidence the FDW holds should be collected, photocopied (one copy for the FDW), and documented. Note that the FDW may pursue only MOM claims or civil claims, but not both.
Enforcing a judgment	The presence of the FDW is not required.

## II. For Foreign Domestic Workers who have left Singapore

- 1.7 FDWs who cannot be physically present in Singapore for court hearings may make an application for leave from the Court to appear via video conferencing.<sup>430</sup>

### A. Video conferencing

#### i. Video conferencing fees

- 1.8 The costs may be excessive for most FDWs, especially if they must pay the fees for using the technology court and its video conferencing facilities in both Singapore and their home country.
- 1.9 The fees payable in Singapore are reflected in the table below.

<sup>429</sup> For more details on civil processes, see Chapter 1, Section 4 “Options available to FDWs seeking redress”.

<sup>430</sup> Evidence Act s 62A(1).

**Table 15: Costs of video conferencing<sup>431</sup>**

Activity	Costs
Technology court	S\$50 per day
Technology court's video conferencing facility	Additional S\$250 per day

1.10 Where a witness is required, FDWs must also pay any other video conferencing fees incurred in the country the witness is situated in, except where the witness is present in Singapore.

1.11 As yet, it remains to be seen whether successful claimants will be entitled to costs for video conferencing facilities.

**ii. Conditions to allowing video conferencing**

1.12 Generally, witness statements are to be given “orally and in person in open court”.<sup>432</sup> However, there are circumstances where the court will allow for evidence to be given through a live video or television link,<sup>433</sup> subject to any Singapore laws relating to evidence.<sup>434</sup>

1.13 Before an FDW will be allowed to appear via video conferencing, courts will go through a three-stage inquiry.<sup>435</sup>

**(a) Stage 1**

1.14 First, the application must fall within one of the four listed scenarios recognized in law.<sup>436</sup> One of the scenarios allows video conferencing when the witness is outside of Singapore. This applies to FDWs who have returned home.

<sup>431</sup> Supreme Court of Singapore website, “Technology Courts Booking” <<https://www.supremecourt.gov.sg/services/court-services/technology-courts-booking>> (accessed 3 July 2018).

<sup>432</sup> *Sonica Industries v Fu Yu Manufacturing Ltd* [1999] 3 SLR(R) 119 (“*Sonica*”) at [8].

<sup>433</sup> Evidence Act s 62A(1) excludes the use of live video link in criminal proceedings; see also *Kim Gwang Seok v Public Prosecutor* [2012] 4 SLR 821 at [24], [27]-[29], where the Court of Appeal explicitly clarified that s 281 of the Criminal Procedure Code (Cap 68, 2012 Rev Ed) should not be applied to allow witnesses who are physically outside Singapore to give evidence via video link for criminal proceedings in Singapore.

<sup>434</sup> See Rules of Court O 38 r 1.

<sup>435</sup> The case of *Sonica* 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 for video conferencing for two witnesses on the basis that they were unable to come to Singapore to give evidence at trial, pursuant to s 62A of the Evidence Act.

<sup>436</sup> Under the Evidence Act 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.

**(b) Stage 2**

- 1.15 Courts then take into account three factors in deciding whether to allow video conferencing:
- 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. For instance, the court may find that it is unfair to deny the use of video conferencing if the FDW is bed-ridden in her home country and unable to travel to Singapore.
- 1.16 These factors are non-exhaustive. The other factors that have been considered include:
- 1) The significance of the evidence;<sup>437</sup>
  - 2) The “security and confidentiality of the proceedings”;<sup>438</sup> and
  - 3) Identity of the person giving evidence: Courts are more likely to allow video conferencing for overseas witnesses because the witness is not obliged to appear in court.<sup>439</sup> Conversely, courts are less inclined to approve the use of video conferencing for a party to the proceeding. However, this is not decisive.<sup>440</sup>

**(c) Stage 3**

- 1.17 Finally, if the court finds that allowing video conferencing will result in unfairness in the way the trial is conducted between the parties, they will deny it.<sup>441</sup> Courts will consider whether and to what extent permitting or denying video conferencing could prejudice each party.<sup>442</sup>
- 1.18 At present, the minimum requirements for acceptable teleconferencing equipment or location is as yet unknown for FDW cases. Given that courts look to whether a location is acceptably “secure”, the court may impose additional restrictions on the form of telecommunications used.<sup>443</sup>
- 1.19 The following locations are likely to prove acceptable:

---

<sup>437</sup> *Sonica* 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.

<sup>438</sup> *IB v Comptroller of Income Tax* [2005] SGDC 50 (“*IB v Comptroller*”) 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 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 for militating against video conferencing.

<sup>439</sup> *Sonica* 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 his presence in Singapore without any success.

<sup>440</sup> Pursuant to s 62A(2) of the Evidence Act, the court should consider all the circumstances of the case. See also *Peters Roger May v Pinder Lillian Gek Lian* [2006] 2 SLR(R) 381 at [27]: “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.”

<sup>441</sup> Evidence Act s 62A(5).

<sup>442</sup> *Sonica* 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 the 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 evidence was very complicated or technical, and the facilities utilized 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.

<sup>443</sup> *IB v Comptroller* [2005] SGDC 50 at [42].

- 1) Universities with professional telecommunications equipment;
- 2) Government-run facilities;
- 3) Embassy facilities;
- 4) Legitimate law firms; or
- 5) Television studios.

1.20 Note that these facilities may require a fee to use. Negotiations with facility owners for a reduced fee or free use of the facilities may be needed.

## **B. Affidavit**

1.21 An affidavit is a written statement made under oath that is used as evidence in court. The general rule is that evidence by a witness is to be provided by an affidavit.<sup>444</sup> Unless the opposing party and the court agree to allow evidence without the need for cross-examination, i.e. challenging the witness through questioning, affidavits by a missing witness will not be allowed except with permission from the court.<sup>445</sup>

---

<sup>444</sup> Rules of Court O 38 r 2(1).

<sup>445</sup> Rules of Court O 38 r 2(1).

## 2. DEALING WITH CLIENTS

- 2.1 Each client has a unique background in terms of their language and culture. Thus, working with each of them may require different approaches. This section aims to explore relevant considerations to take into account while working with FDWs.

### I. Language barriers

- 2.2 Effective communication is particularly important because miscommunication can result in FDWs missing important deadlines, providing wrong materials, or becoming confused about the progress of their claim and/or the nature of the decisions they must make. Facing other personal challenges, these frustrations may urge FDWs to drop their case. Hence, the ability to speak in the native tongue of the FDW client is a tremendous asset as it reduces the risk of information being lost in translation. Even then, language is heavily influenced by geography and culture. A Singapore practitioner fluent in Bahasa Indonesia may face communication problems when his or her Indonesian client uses slang unique to her region or community.

#### A. Explaining legal terms

- 2.3 Certain legal terms and concepts may be difficult to explain to the FDW. While a word-for-word translation is ideal, the practitioner may alternatively give a rough explanation of the legal concept. For instance, the complex concept of a tortious claim could be explained in loose terms as the concept is usually not vital to an FDW's understanding of her case.
- 2.4 Prior to a consultation with the FDW, it is helpful to consider which terms are required for the consultation (e.g. "housing", "wages", "deduction") and familiarize oneself with them. One way of checking if the FDW has understood the practitioner's explanation is to get her to describe the term or concept in her own words after.

### II. Differences in the legal system

- 2.5 The FDW may be reluctant to pursue a civil claim in a foreign country due to her unfamiliarity with the legal process. Even for FDWs well-acquainted with the legal processes in their home country, the procedural and technical differences between the legal systems in Singapore and their home country might cause some discomfort.<sup>446</sup> Thus, practitioners should spend some time explaining to the FDW on what pursuing a civil claim in Singapore involves to help them adjust to these differences. This will help keep the FDW involved in the process and to encourage her to see her claim through.

### III. Timeframes

- 2.6 When faced with temporal and accompanying financial pressures, FDWs become more willing to accept an unfair settlement or to give up on their case. Thus, drafting out timelines of the various legal options available could help ease such pressures and allow the FDW to better make informed decisions about her case. In drafting timelines, it is important to

---

<sup>446</sup> For instance, unlike Singapore, which is based on the English common law system, the legal system in Indonesia is based on Dutch civil law and customary law. See Saldi Isra, Ferdi & Hilaire Tegnau, "Rule of Law and Human Rights Challenges in South East Asia: A Case Study of Legal Pluralism in Indonesia" (2017) 3 Hasanuddin Law Review 117, at 118.

take note that some cases may take longer if enforcement of judgment in civil court is required.

#### **IV. Telecommunication**

- 2.7 Connectivity issues can make it challenging to maintain contact with an FDW who has returned to her home country. Internet telecommunications, such as Skype or Facebook, may be unreliable if the FDW does not have easy access to a stable Internet connection. Especially for FDWs living in remote areas, the telecommunication signal may be poor or non-existent, making it difficult to have phone calls with the FDW.
- 2.8 Even after returning home, FDWs may move within their own country or change their cell phone numbers. The changing of numbers is not uncommon amongst Indonesian FDWs as new phone numbers are inexpensive to obtain. All these considerations should be taken into account when discussing with the FDW about how to maintain contact after she leaves Singapore. The need to update her lawyer or the NGO assisting her with her potential claims should the FDW change her cell phone number cannot be overstated.

#### **V. Other cultural differences or impediments**

- 2.9 For some FDWs, there is a lack of incentive to pursue the case once they return to their home countries, which could manifest as a failure to keep up with the relevant timelines, or a reluctance to communicate with the lawyer or case workers. This could be due to the lack of family support, or even active discouragement by the FDW's family to continue the claim.
- 2.10 Besides the lack of family support, some FDWs also face pressure from the brokers who sent them overseas to discontinue their claims. Home country employment agencies in regular contact with their Singaporean counterparts can also actively pressure the FDW into dropping the claim, citing the complaints (if any) made by the employer against the FDW.
- 2.11 The stresses brought to bear over the FDW in their home country cannot be discounted as the broker, the employment agency and the FDW's family usually belong to the same community, leading to great societal pressure to discontinue the claim.

### **3. HELP FROM HOME COUNTRY PARTNERS**

3.1 Partners located in the FDW's home country, such as lawyers in the FDW's home country or direct service organisations,<sup>447</sup> can help overcome many of the logistical hurdles faced by Singapore practitioners.<sup>448</sup> This section first discusses how home country partners can meet the specific litigation needs of Singapore-based lawyers, before looking at the local partners that a practitioner can approach. Finally, it looks at the common activities that a home country partner might carry out for a Singapore practitioner.

#### **I. How a home country partner can help**

3.2 A suitable home country partner can help bridge the language barrier that might exist between the Singapore lawyer and the FDW. For instance, case updates from the lawyer can be communicated to the FDW in her native language and instructions from the FDW can be conveyed to the lawyer in English.

3.3 Crucially, a home country partner can serve as a point of contact to ease communication between the FDW and the lawyer. For instance, where telecommunication between the FDW and the lawyer proves to be challenging, the home country partner can arrange to meet the FDW in person and follow up with the lawyer afterwards. Further, these partners are in closer proximity to the FDWs, and are thus in a better geographical position to collect required evidence located in the FDW's home country.

#### **II. Finding a home country partner**

3.4 This segment introduces some potential local partners that Singapore practitioners can approach. They are not listed in any particular order, and the benefits and drawbacks of working with each group will be explored.

3.5 As a starting point, practitioners can use geographical location and distance to narrow down their options. If the FDW resides in a large urban area, multiple options are likely be available. However, if the FDW resides in remote parts of the country, the options become limited and practitioners would have to consider partners located some distance away in a larger town. FDWs should be encouraged to have a say in the selection process because the relationship between the FDW and the home country partner is just as important as that between the practitioner and the partner.

##### **A. Lawyers and national bar associations**

3.6 Prior to selecting home country partners, practitioners should check the licensing requirements for conducting case-related activities such as evidence collection and the taking of statements.

3.7 Under some circumstances, paralegals (e.g. caseworkers with practical experience in legal matters) are able and allowed to assist in the early stages of pursuing a claim (e.g., in building the case) in the FDW's home country.

---

<sup>447</sup> 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.

<sup>448</sup> Some of these common obstacles have been discussed in the previous section.

- 3.8 For a directory of potential legal partners, practitioners in the host country can start with the registry of lawyers maintained by national bar associations. However, practitioners should check for any potential conflicts of interest, such as where the lawyer who is a potential home country partner has previously represented or is currently representing employment agencies or brokers.
- 3.9 The following are some national bar associations that the host country practitioner can contact:
- 1) International Pro Bono Alliance (Indonesia/Philippines)
  - 2) Perhimpunan Advokat Indonesia (PERADI) (Indonesia)
  - 3) Integrated Bar of the Philippines (Philippines)
  - 4) National Union of Peoples' Lawyers (Philippines)

## **B. Law Faculties and Legal Clinics**

- 3.10 Many law faculties now house legal clinics that might be willing to provide assistance on a pro bono basis or at a reduced fee. Even though migrant worker-focused legal clinics are relatively rare, and legal scholars familiar with labour migration can be difficult to find, host country practitioners should still contact a law faculty closest to the FDW's place of residence to find out if they are willing to help or can provide a reference to another party who might serve as a suitable liaison.
- 3.11 The benefit of working with law faculties is that law professors and students are likely to have a good command of written English, and those operating legal clinics will usually be more willing to assist. However, law students may require additional training and supervision, so it is vital to ensure that the supervising professor or staff is fully informed of the details of the case and is able to effectively manage the team.
- 3.12 The following are universities in Indonesia and Philippines with a law faculty that the practitioner can consider approaching:
- 1) Airlangga University (Indonesia)
  - 2) Universitas Gadjah Mada (Indonesia)
  - 3) University of Indonesia (Indonesia)
  - 4) Ateneo de Davao University (Philippines)
  - 5) University of San Carlos (Philippines)
  - 6) University of the Philippines (Philippines)

## **C. Community-based and non-governmental organisations**

- 3.13 The types of direct service organisations practitioners can approach can be classified into local legal aid organisations, organisations with paralegals, and organisations without paralegal staff.
- 3.14 To avoid delays and future complications, host country practitioners should communicate the intended scope of partnership to the organisation to ensure that they have sufficient capacity to provide assistance.

- 3.15 As noted above,<sup>449</sup> the geographical location and distance of the organisation's office from the FDW's place of residence can serve as a good starting point when the practitioner is deciding whether to partner with an organisation. Another important factor to consider is the credibility of the organisation. In assessing the reliability of these organisations, practitioners can look at the other entities that the organisation is currently working with or has worked with. Support from international bodies or national non-governmental organisations ("NGOs") are meaningful indicators of the credibility of the organisation.
- 3.16 The following are some NGOs that the practitioner can consider approaching:
- 1) Association of Indonesian Women for Justice (LBH APIK) (Indonesia)<sup>450</sup>
  - 2) Asosiasi Pusat Pengembangan Sumberdaya Wanita (PPSW) (Indonesia)<sup>451</sup>
  - 3) Koalisi Perempuan Indonesia untuk Keadilan dan Demokrasi (Indonesia)<sup>452</sup>
  - 4) Pagayuban Peduli Buruh Migran dan Perempuan Seruni (Indonesia)<sup>453</sup>
  - 5) Serikat Buruh Migran Indonesia (SBMI) (Indonesia)<sup>454</sup>
  - 6) Atikha Overseas Workers and Communities Initiative, Inc. (Philippines)<sup>455</sup>
  - 7) Development Action for Women Network (DAWN) (Philippines)<sup>456</sup>
  - 8) National Reintegration Centre for OFWs (Philippines)<sup>457</sup>
  - 9) The Philippine Migrants Rights Watch (PMRW) (Philippines)<sup>458</sup>
  - 10) Voice of the Free (previously known as Visayan Forum) (Philippines)<sup>459</sup>

#### D. Relevant religious institutions

- 3.17 In many parts of the world and throughout history, religious institutions play a key role in community cohesiveness and integration.<sup>460</sup> Liaising with a religious institution may help with getting FDWs to open up and engage more with the process because they will be more likely to trust these actors on the basis of their shared religion.
- 3.18 There are, however, several considerations to selecting an appropriate religious institution. First, practitioners should be mindful that major religions are not monolithic. The existence of cultural, ethnic, and sectarian divisions means that the practitioner should be careful when determining the particular sect to which the FDW belongs. When in doubt, practitioners can consult local service providers or Singapore-based religious institutions.<sup>461</sup>
- 3.19 Second, practitioners should assess the suitability of the local religious institutions by ensuring that they do not have any conflict of interests with the FDW via ties to local

<sup>449</sup> See Chapter 3, Section 3(III) "Guidelines to establishing a partnership with a local partner".

<sup>450</sup> LBH APIK is a legal aid group for women that focuses particularly on human trafficking and gender-based violence.

<sup>451</sup> PPSW is a women-focused NGO that aims to empower women through the transformation of their role in society.

<sup>452</sup> The Koalisi advocates for the rights of women and marginalized groups in the civil and political arena.

<sup>453</sup> Seruni is a community organisation formed by former migrant workers and their families. It focuses on promoting safe migration and policy advocacy.

<sup>454</sup> SBMI is a union that advocates for migrant worker rights.

<sup>455</sup> Atikha is a NGO that provides social and economic services to Filipinos working overseas and their families in Philippines.

<sup>456</sup> DAWN is a NGO that recently expanded its efforts to helping Filipino FDWs and their families.

<sup>457</sup> NRCO is envisioned to be the one stop centre related to all the Department of Labour and Employment's reintegration services for returning migrant workers and their families.

<sup>458</sup> PMRW is a NGO that encourages the recognition, protection and fulfilment of Filipino migrants' rights – both in the Philippines and abroad.

<sup>459</sup> Voice of the Free is a NGO that helps victims of human trafficking.

<sup>460</sup> Dr Shanjendu Nath, "Religion and Its Role in Society" ISOR Journal of Humanities and Social Science 2015; 20(11): 82-85, at 83-84.

<sup>461</sup> Care must also be taken when approaching Singapore-based religious institutions for help. For instance, an Indian-Muslim institution is unlikely to have many useful connections to Muslim institutions in Central Java in Indonesia.

employment agencies or brokers. Additionally, not all religious institutions will have caseworkers or would even agree with the philosophy of pursuing civil claims.

## **E. Home country offices of international organisations**

3.20 The three governmental organisations heavily involved in migrant worker issues and which have strong connections with home country partners are: the International Labour Organization (“ILO”), the International Organization for Migration (“IOM”), and various branches of the United Nations (“UN”). The missions of these three organisations in supporting greater access to justice for migrant workers, are aligned with Justice Without Border’s goal of seeking just compensation for the FDW.<sup>462</sup>

3.21 However, as the capacity and mission focus of each local office of these organisations differs from country to country, this impacts the amount of assistance the local office is able to provide the practitioner in terms of casework or finding a suitable local partner. Practitioners may also turn to these organisations for referrals to local partner organisations.

### **i. The ILO**

3.22 The ILO is heavily involved in labour migration issues in Asia.<sup>463</sup> Practitioners should examine the programmes that the ILO has set up in the FDW’s home country to determine whether such programmes exist near the FDW’s place of residence.<sup>464</sup>

### **ii. The IOM**

3.23 The IOM frequently assists victims of human trafficking and exploitation by ensuring a safe passage to their home country and subsequent reintegration into their home communities.<sup>465</sup> The IOM offices may have staff or volunteers who are equipped to serve as a liaison between the Singapore practitioner and the FDW.

### **iii. The UN**

3.24 The most relevant UN agencies in relation to FDW cases are the UN Development Program (“UNDP”) and UN Women. The former has a stated interest in access to justice for migrant workers, particularly for women,<sup>466</sup> while the latter works to advance women’s rights, including that of migrant workers.<sup>467</sup> UNDP and UN Women often contract with local universities and NGOs to implement their missions and are good first points of contact for referrals to reliable partners.

---

<sup>462</sup> For the ILO’s mission, see ILO website, “Mission and impact of the ILO” <<http://www.ilo.org/global/about-the-ilo/mission-and-objectives/lang--en/index.htm>> (accessed 2 July 2018). For IOM’s mission, see IOM website, “Mission” <<https://www.iom.int/mission>> (accessed 2 July 2018).

<sup>463</sup> Access to justice is often a high priority mission for the ILO, and the organisation has partnered with governments and local labour unions before to establish local migrant worker centres.

<sup>464</sup> See also ILO projects and programmes sorted by country at ILO website <<http://www.ilo.org/global/regions/lang--en/index.htm>> (accessed 2 July 2018).

<sup>465</sup> For more information about IOM’s work on Assisted Voluntary Return and Reintegration, see IOM website <<https://www.iom.int/assisted-voluntary-return-and-reintegration>> (accessed 3 July 2018).

<sup>466</sup> See UNDP website, “About us” <<http://www.undp.org/content/undp/en/home/about-us.html>> (accessed 2 July 2018).

<sup>467</sup> See UN Women website, “About UN Women” <<http://www.unwomen.org/en/about-us/about-un-women>> (accessed 2 July 2018).

**F. International law firms with presence in Singapore and the Foreign Domestic Worker's home country**

- 3.25 Local knowhow, experience with cross-border litigation, and sufficient capacity, including the potential to assist with remote appearances via the firms' own telecommunications equipment, are a few of the unique advantages that a cooperating international law firm can provide.
- 3.26 International law firms may be willing to assist pro bono if they have an office in the FDW's home country. Firms can tap on this to fulfil its pro bono obligations, or create a positive story of community engagement in the FDW's home country. As mentioned above,<sup>468</sup> it is critical to confirm that there are no conflicts of interest.
- 3.27 Nevertheless, many international law firms limit their pro bono activities to the countries in which their offices are situated, particularly where they are required to partner with a local firm to conduct pro bono work. Thus, international law firms that support FDW cases in Singapore may not necessarily do so abroad.

**III. Guidelines to establishing a partnership with a home country partner**

- 3.28 Providing potential partners with a clear scope of the case commitment will help avoid unnecessary future complications in the partnership by delineating the manpower, time, and resources required from both parties. Even if the potential partner is unable to commit, a clear scope will allow them to recommend a suitable home country partner with the capacity to assist.
- 3.29 The first two segments of this section describe the vetting process. The following segments discuss the most common activities that local partners will have to conduct for the practitioner.

**A. Vetting potential partners**

- 3.30 Practitioners should first assess potential partners to ensure that they are trustworthy, and have the capacity to meet both the FDW's and the practitioner's needs. The following points apply to both organisations and individual pro bono attorneys.

**B. What is the home country partner's reputation?**

- 3.31 Basic background research may be sufficient to determine whether the potential partner is trustworthy. This is important because an organisation's NGO status may simply be used to avoid tax liability for commercial activity. At worst, such organisations may have connections to dishonest employment agencies or even human traffickers. Practitioners can also contact trustworthy entities in the FDW's home country to confirm that the potential partner is reliable.

**C. Does the home country partner have sufficient language ability?**

- 3.32 One of the major benefits of liaising with a home country partner is that they can help bridge the language gap between the practitioner and the FDW. In addition to speaking a language that the lawyer understands, practitioners should confirm that the partner organisation has

---

<sup>468</sup> See Chapter 3, Section 3(II)(A) "Lawyers and national bar associations".

staff who speak the FDW's own language or dialect. This is especially important where the FDW's first language is not the national language of their home country.

#### **D. Is there sufficient capacity to assist the practitioner?**

- 3.33 While local organisations and pro bono attorneys are generally willing to help, an assessment of whether they have the resources to assist is essential, particularly where deadlines are involved. Practitioners should map out the time commitment, potential time span of the case, and any logistical issues that local partners will have to address so that both sides have a clear understanding of the resources required. Even where potential partners do not have such capacity, they can still help in recommending other appropriate partners.

#### **E. Entering a formal relationship with a home country partner**

- 3.34 Direct service and other aid organisations are usually bound by duties of client confidentiality similar to those of Singapore lawyers. Practitioners will thus need to draw up a memorandum of understanding specifying the sharing of confidential client information and procedures for transferring monies collected. Ideally, the agreement should be in languages that all parties understand. It would also be ideal to set goals, targets and timelines with regard to the implementation of the partnership.

#### **F. Maintaining contact with the Foreign Domestic Worker**

- 3.35 A home country partner's most important task is to ensure that FDWs can remain in contact with the Singapore practitioner. While a partner cannot compel an FDW to continue with a case she has decided to drop, a strong relationship with her is critical to ensuring that she continues to trust, and is engaged in, the process.
- 3.36 Maintaining contact often requires periodic phone conversations, or where possible, in-person visits by the home country partner. Setting a regular check-in schedule is important to keeping the FDW updated with her case and to building a strong relationship between the FDW and the partner.
- 3.37 Finally, both practitioners and home country partners should be prepared for FDWs to migrate multiple times throughout the course of the case, including to other countries, making it increasingly difficult to maintain contact. For FDWs who move within their home country, practitioners and partners should be prepared to find organisations in the new location who can serve as new liaisons.

#### **G. Collecting evidence and taking depositions**

- 3.38 Although much of the evidence highlighted in this Manual can be located in Singapore, FDWs may have taken home personal bankbooks, payments slips, or other vital information. Practitioners should determine what information is necessary and ensure that home country partners have a clear understanding of what is needed, how to collect the information, and any deadline(s) that must be obeyed.

## **H. Explaining critical differences in evidence collection methods**

- 3.39 Legal systems often have different requirements for how evidence is recorded and presented. Differences can range from the required level of detail, the proof of authenticity, to document formatting. Practitioners must provide partners with clear instructions, and where possible, pre-formatted forms that will ensure that the evidence collected is admissible in Singapore courts. Nevertheless, practitioners should be prepared for delays and mistakes in evidence collection with new partners because they may not be fully aware of the level of detail needed, and may rely upon methods valid in their own country when performing tasks.

## APPENDIX 1: RELEVANT STATUTORY PROVISIONS

<b>Relevant Statutory Provisions</b>	<b>Page(s)</b>
Contributory Negligence and Personal Injuries Act (Cap 54, 2002 Rev Ed).....	59
Section 3. Apportionment of liability in case of contributory negligence.....	59
Criminal Procedure Code (Cap 68, 2012 Rev Ed)	
Section 281. Evidence through video or television links.....	112
Section 359. Order for payment of compensation.....	89
Defamation Act (Cap 75, 2014 Rev Ed)	
Section 5. Slander affecting official, professional or business reputation.....	80
Section 6. Slander of title, etc.....	80
Employment Act (Cap 91, 2009 Rev Ed).....	26
Employment Agencies Act (Cap 92, 2012 Rev Ed).....	26, 32
Employment Agencies Rules 2011 (GN No. S 172/2011).....	26
Rule 12. Scale of fees, etc.....	20, 98
Rule 13. Refund of fees.....	98
Employment Claims Act 2016 (GN No. 21/2016).....	26, 31
Employment of Foreign Manpower Act (Cap 91A, 2009 Rev Ed).....	24, 26, 32, 40, 47-48, 61-64, 67
Section 5. Prohibition of employment of foreign employee without work pass.....	96
Section 22A. Restrictions on receipt, etc., of moneys in connection with employment of foreign employee.....	47
Section 25. General prescribed infringements.....	67
Section 29. Regulations.....	67
Employment of Foreign Manpower (Work Passes) Regulations 2012 (GN No. S 569/2012).....	26, 61-64, 67
Section 4. Work permit.....	96
FOURTH SCHEDULE	
Conditions and regulatory conditions of work permit.....	24, 60-66, 96
Evidence Act (Cap 97, 1997 Rev Ed)	

Section 62A. Evidence through live video or live television links.....	111-113
Section 94. Exclusion of evidence of oral agreement.....	46
Immigration Act (Cap 133, 2008 Rev Ed).....	26
Immigration Regulations (GN No. S 252/1972).....	26
Regulation 15. Special pass.....	28
Interpretation Act (Cap 1, 2002 Rev Ed)	
Section 9A. Purposive interpretation of written law and use of extrinsic materials.....	62
Misrepresentation Act (Cap 390, 1994 Rev Ed).....	56
Section 2. Damages for misrepresentation.....	56
Penal Code (Cap 224, 2008 Rev Ed)	
Section 182. False information, with intent to cause a public servant to use his lawful power to the injury of another person.....	75
Section 376. Sexual assault by penetration.....	68
Personal Data Protection Act 2012 (GN No. 26/2012).....	100, 105-107
Section 2. Interpretation.....	105
Section 21. Access to personal data.....	100, 103-105
Section 29. Power to give directions.....	106
Section 32. Right of private action.....	107
Protection from Harassment Act (Cap 256A, 2015 Rev Ed).....	42, 71-72, 74, 88
Section 3. Intentionally causing harassment, alarm or distress.....	71-73, 88
Section 4. Harassment, alarm or distress.....	71-73, 88
Section 5. Fear of provocation of violence.....	88
Section 7. Unlawful stalking.....	71, 73-74
Section 11. Action for statutory tort.....	88
Section 12. Protection order.....	71
Section 13. Expedited protection order.....	71
Section 14. No civil action for common law tort of harassment.....	71
Rules of Court (Cap 322, R 5, 2014 Rev Ed).....	31

Order 18, rule 2. Service of defence.....	35
Order 23. Security for costs.....	29
Order 35, rule 1. Failure to appear by both parties or one of them.....	110
Order 38, rule 1. General rule: Witnesses to be examined.....	112
Order 38, rule 2. Evidence by affidavit.....	114
Order 45. Enforcement of judgments and orders.....	32
Order 59, rule 2. Application.....	31
Order 59, rule 3. When costs to follow the event.....	31
Order 59, rule 5. Special matters to be taken into account in exercising discretion.....	31
Order 90A, rule 1. Hearing fees in Courts.....	31
Order 91, rule 5. Powers of Registrar concerning court fees.....	30
<b>State Courts Practice Directions</b>	
Rule 12. Substituted service.....	100
<b>Supreme Court Practice Directions</b>	
Rule 33. Substituted service.....	100
Workplace Injury Compensation Act (Cap 354, 2009 Rev Ed).....	26
Workplace Safety and Health Act (Cap 354A, 2009 Rev Ed).....	26
Section 12. Duties of employers.....	60

## APPENDIX 2: CASES

<b>Cases</b>	<b>Page(s)</b>
<i>ACB v Thomson Medical Pte Ltd and others</i> [2017] 1 SLR 918.....	85
<i>Addis v Gramophone Co Ltd</i> [1909] AC 488.....	57
<i>Aldabe Fermin v Standard Chartered Bank</i> [2010] 3 SLR 722.....	57
<i>Alexander v The Home Office</i> [1998] IRLR 190.....	89
<i>Allcard v Skinner</i> (1887) 36 Ch D 145.....	51, 52
<i>Amutha Valli d/o Krishnan v Titular Superior of the Redemptorist Fathers in Singapore &amp; Ors</i> [2009] 2 SLR(R) 1091.....	69, 70
<i>Animal Concerns Research &amp; Education Society v Tan Boon Kwee</i> [2011] 2 SLR 146.....	67
<i>ATU and others v ATY</i> [2015] 4 SLR 1159.....	75, 79
<i>Au Yeong Wing Loong v Chew Hai Ban &amp; Anor</i> [1993] 2 SLR(R) 290.....	81, 82
<i>Bank of Credit v Aboody</i> [1990] 1 QB 923.....	51
<i>BDA v Domenico Quirino</i> [2015] EWHC 2974.....	84, 87
<i>Benber Dayao Yu v Jacter Singh</i> [2017] 5 SLR 316.....	71, 72, 73
<i>Benedetti v Sawiris</i> [2013] UKSC 50.....	97
<i>Bird v Jones</i> (1845) 7 QB 742.....	70
<i>Bisset v Wilkinson</i> [1927] AC 177.....	53
<i>BOK v BOL and another</i> [2017] SGHC 316.....	51, 52
<i>Bolton v Stone</i> [1951] 1 All ER 1078.....	60
<i>C v WH</i> [2015] EWHC 2687.....	88
<i>Car &amp; Universal Finance Co Ltd v Caldwell</i> [1965] 1 QB 525.....	55
<i>Chai Kang Wei Samuel v Shaw Linda Gillian</i> [2010] 3 SLR 587.....	81, 82
<i>Chan Cheng Wah Bernard and others v Koh Sin Chong Freddie and another appeal</i> [2012] 1 SLR 506.....	78
<i>Chandran a/l Subbiah v Dockers Marine Pte Ltd</i> [2010] 1 SLR 786.....	60
<i>Chang Mui Hoon v Lim Bee Leng</i> [2013] SGHCR 17.....	85
<i>Chappell &amp; Co Ltd v Nestle Co Ltd</i> [1959] UKHL 1.....	46
<i>Cheah Peng Hock v Luzhou Bio-Chem Technology Limited</i> [2013] 2 SLR 577.....	58

<i>Chee Siok Chin v Minister for Home Affairs</i> [2006] 1 SLR(R) 582.....	72
<i>Chwee Kin Keong and others v Digilandmall.com Pte Ltd</i> [2005] 1 SLR(R) 502.....	99
<i>Collins v Wilcock</i> [1984] 1 WLR 1172.....	69
<i>Credit Lyonnais Bank Nederland v Burch</i> [1997] 1 All ER 144.....	52
<i>CTN Cash and Carry Ltd v Gallaher Ltd</i> [1994] 4 All ER 714.....	50
<i>Dafu Zhang v Virtu Financial Global Services Singapore Pte. Ltd. And Virtu Financial Singapore Pte. Ltd.</i> [2018] SGMC 26.....	67
<i>Davidson v Chief Constable of the North Wales Police</i> [1994] 2 All ER 597.....	70
<i>De Souza v Vinci Construction (UK) Ltd</i> [2017] EWHC 2550.....	89
<i>Derry v Peek</i> [1889] 14 App Cas 337.....	55
<i>Deutsche Bank AG v Chang Tse Wen</i> [2013] 1 SLR 1310.....	53
<i>DHKW Marketing and another v Nature's Farm Pte Ltd</i> [1998] 3 SLR(R) 774.....	79
<i>Dickinson v Waters Ltd</i> (1931) 31 SR (NSW) 593.....	70
<i>Dimmock v Hallett</i> [1866] 2 CH App 21.....	54
<i>E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and another (Orion Oil Ltd and another, interveners)</i> [2011] 2 SLR 232.....	49, 50
<i>E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd and others and another appeal</i> [2012] 1 SLR 32.....	97
<i>Fagan v Commissioner of Metropolitan Police</i> [1968] 3 WLR 1120.....	68
<i>FKB v Lampitt</i> [2015] EWHC 3368.....	87
<i>Gay Choon Ing v Loh Sze Ti Terence Peter and another appeal</i> [2009] 2 SLR 332.....	46, 48
<i>GLB v TH</i> [2012] EWHC 3904.....	88
<i>Goel Adesh Kumar v Resorts World at Sentosa Pte Ltd (SATS Security Services Pte Ltd, third party)</i> [2015] SGHC 289.....	69, 70
<i>Goh Bee Lan v Yap Soon Guan and another</i> [2018] SGHC 11.....	49, 50
<i>Goh Lay Kim and others v Isabel Redrup Agency Pte Ltd and another appeal</i> [2017] 1 SLR 546.....	75, 77, 78
<i>Hedley Byrne &amp; Co Ltd v Heller &amp; Partners Ltd</i> [1964] AC 465.....	56
<i>Hopper v Reeve</i> (1871) 7 Taunton 698; 129 ER 278.....	68
<i>IB v Comptroller of Income Tax</i> [2005] SGDC 50.....	113
<i>Iqbal v Prison Officers Association</i> [2010] 2 WLR 1054.....	70

<i>Isabel Redrup Agency Pte Ltd v A L Dakshnamoorthy and others</i> [2016] 2 SLR 634.....	75
<i>Jemma Ewin v Claudio Vergara</i> [2013] FCA 1311.....	89
<i>Jia Min Building Construction Pte Ltd v Ann Lee Pte Ltd</i> [2004] 3 SLR(R) 288.....	81
<i>Jurong Town Corporation v Wishing Star Ltd</i> [2005] 3 SLR 283.....	54
<i>KD v Chief Constable of Hampshire</i> [2005] EWHC 2550.....	89
<i>Kea Holdings Pte Ltd v Gan Boon Hock</i> [2000] 2 SLR(R) 333.....	55
<i>Kim Gwang Seok v Public Prosecutor</i> [2012] 4 SLR 821.....	112
<i>Koh Sin Chong Freddie v Chan Cheng Wah Bernard and others and another appeal</i> [2013] SGCA 46.....	83
<i>Lal Hiranand v Kamla Lal Hiranand</i> [2006] SGHC 98.....	48
<i>Latimer v AEC Ltd</i> [1952] QB 701.....	61
<i>Lee Kuan Yew v Seow Khee Leng</i> [1988] 2 SLR(R) 252.....	79
<i>Lee Kuan Yew v Vinocur John and others</i> [1996] 1 SLR(R) 840.....	79
<i>Leow Chin Hua v Ng Poh Buan</i> [2005] SGHC 39.....	54
<i>Li Siu Lun v Looi Kok Poh and another</i> [2015] 4 SLR 667.....	83, 84
<i>Lim Eng Hock Peter v Lin Jian Wei</i> [2010] 4 SLR 357.....	79
<i>Lipkin Gorman (a firm) v Karpnale Ltd</i> [1991] 2 AC 548.....	15
<i>Long v Lloyd</i> [1958] 1 WLR 753.....	55
<i>Lonrho v Shell Petroleum Co Ltd (No 2)</i> [1982] AC 173.....	67
<i>Low Tuck Kwong v Sukamto Sia</i> [2014] 1 SLR 639.....	77
<i>Management Corporation Strata Title Plan No 586 v Menezes Ignatius Augustine</i> [1992] 1 SLR(R) 201.....	67
<i>Management Corporation Strata Title Plan No 3322 v Tiong Aik Construction Pte Ltd and another</i> [2016] 4 SLR 521.....	61
<i>Melaka Farm Resorts (M) Sdn Bhd v Hong Wei Seng</i> [2004] 6 MLJ 506.....	46
<i>Minichit Bunhom v Jazali bin Kastari and another</i> [2018] 1 SLR 1037.....	61
<i>Murray v Ministry of Defence</i> [1988] 1 WLR 692.....	70, 84
<i>Myer Stores Ltd v Soo</i> [1991] 2 VR 597.....	70
<i>Mykytowych, Pamela Jane v V I P Hotel</i> [2016] SGCA 44.....	82
<i>Ng Weng Cheong v Soh Oh Loo and another</i> [1993] 1 SLR(R) 532.....	59

<i>Ong Lu Ling v Tan Ho Seng</i> [2018] SGHC 65.....	97
<i>OTF Aquarium Farm (formerly known as Ong's Tropical Fish Aquarium &amp; Fresh Flowers) (a firm) v Lian Shing Construction Co Pte Ltd (Liberty Insurance Pte Ltd, Third Party)</i> [2007] SGHC 122.....	81
<i>Overseas Tankship (UK) Ltd v The Miller Steamship Co</i> [1967] 1 AC 367.....	61
<i>Peek v Gurney</i> (1873) LR 6 HL 377.....	53
<i>Pek Nam Kee and another v Peh Lam Kong and another</i> [1994] 2 SLR(R) 750.....	51
<i>Pepper v Hart</i> [1992] 3 WLR 1032.....	62
<i>Peters Roger May v Pinder Lillian Gek Lian</i> [2006] 2 SLR(R) 381.....	113
<i>Poh Huat Heng Corp Pte Ltd and others v Hafizul Islam Kofil Uddin</i> [2012] 3 SLR 1003; [2012] SGCA 31.....	81, 82
<i>Public Prosecutor v Anpalaki Muniandy Marimuthu &amp; Anor</i> [2016] SGMC 56.....	90
<i>Public Prosecutor v Chong Siew Chin</i> [2001] 3 SLR(R) 851.....	84, 91
<i>Public Prosecutor v Donohue Enilia</i> [2005] 1 SLR(R) 220.....	90
<i>Public Prosecutor v Fok Jun Hong Johnson</i> [2016] SGMC 19.....	90
<i>Public Prosecutor v Foo Chee Ring</i> [2008] SGDC 298.....	90, 91
<i>Public Prosecutor v Kwong Kok Hing</i> [2008] 2 SLR(R) 684.....	91
<i>Public Prosecutor v Lim Hong Kheng and another</i> [2006] SGMC 7.....	96, 97
<i>Public Prosecutor v Low Gek Hong</i> [2015] SGDC 192.....	90
<i>Public Prosecutor v Tong Chew Wei</i> [2009] SGDC 202.....	91
<i>Qualcast (Wolverhampton) Ltd v Haynes</i> [1959] AC 743.....	61
<i>R v Attorney-General for England and Wales</i> [2003] UKPC 22.....	49
<i>R v Cotesworth</i> (1704) 6 Mod Rep 172.....	68
<i>Rainforest Trading Ltd and another v State Bank of India Singapore</i> [2012] 2 SLR 713...	46
<i>RBC Properties Pte Ltd v Defu Furniture Pte Ltd</i> [2015] 1 SLR 997.....	56
<i>RDC Concrete Pte Ltd v Sato Kogyo (S) Pte Ltd</i> [2007] 4 SLR 413.....	58
<i>Re Selectmove Ltd</i> [1995] 1 WLR 474.....	48
<i>Review Publishing Co Ltd and another v Lee Hsien Loong and another appeal</i> [2010] 1 SLR 52.....	77
<i>Rookes v Barnard</i> [1964] AC 1129.....	83

<i>S Pacific Resources Ltd v Tomolugen Holdings Ltd</i> [2016] 3 SLR 1049.....	47
<i>SATS Construction Pte Ltd v Islam Md Ohidul</i> [2016] 3 SLR 1164.....	30
<i>Shah v Standard Chartered Bank</i> [1999] QB 241.....	78
<i>Sharon Global Solutions Pte Ltd v LG International (Singapore) Pte Ltd</i> [2001] 2 SLR(R) 233.....	50
<i>Sidhu v Raptis</i> [2012] FMCA 338.....	88
<i>Simmons v Castle</i> [2012] EWCA Civ 1039.....	89
<i>Sivakami d/o Sivanantham v Attorney-General</i> [2012] SGHCR 5.....	82, 88
<i>Smith v Land &amp; House Property Corporation</i> [1884] 28 Ch D 7.....	53
<i>Smith v Manchester Corporation</i> [1974] KIR 1.....	82
<i>Soh Meiyun v Public Prosecutor</i> [2014] 3 SLR 299.....	90, 91
<i>Sonica Industries v Fu Yu Manufacturing Ltd</i> [1999] 3 SLR(R) 119.....	112, 113
<i>Spice Girls Ltd v Aprilla World Service BV</i> [2002] EMLR 27.....	54
<i>Sunny Metal &amp; Engineering Pte Ltd v Ng Khim Ming Eric (practicing under the name and style of W P Architects)</i> [2007] 1 SLR(R) 853.....	47
<i>Stephens v Myers</i> (1830) 172 ER 735.....	69
<i>Tam Tak Chuen v Khairul bin Abdul Rahman and others</i> [2009] 2 SLR(R) 240.....	50
<i>Tan Harry and another v Teo Chee Yeow Aloysius and another</i> [2004] 1 SLR(R) 513.....	83, 84
<i>Tan Hun Hoe v Harte Denis Mathew</i> [2001] 3 SLR(R) 414.....	80
<i>Tan Juay Mui v Sher Kuan Hock</i> [2012] 3 SLR 496.....	80
<i>Tan Kok Lam (next friend to Teng Eng) v Hong Choon Peng</i> [2001] 1 SLR(R) 786.....	82, 83
<i>Tay Wee Kiat and another v Public Prosecutor and another appeal</i> [2018] SGHC 42.....	84, 91
<i>Tay Wee Kiat and another v Public Prosecutor and another appeal</i> [2018] SGHC 114.....	89, 90, 91
<i>Ting Siew May v Boon Lay Choo and another</i> [2014] 3 SLR 609.....	47
<i>Trans-World (Aluminium) Ltd v Cornelder China (Singapore)</i> [2003] 3 SLR 501.....	54
<i>Tuberville v Savage</i> (1669) 86 ER 684.....	69, 70
<i>UCB Corporate Services</i> [2002] EWCA Civ 555.....	51
<i>Vento v Chief Constable of West Yorkshire</i> [2003] ICR 318.....	89
<i>Wales v Wadham</i> [1977] 1 WLR 199.....	53

<i>WBG Network (Singapore) Pte Ltd v Meridian Life International Pte Ltd and others</i> [2008] 4 SLR(R) 727.....	79
<i>Wee Kim San Lawrence Bernard v Robinson &amp; Co (Singapore) Pte Ltd</i> [2014] 4 SLR 357.....	57
<i>Wee Sia Tian v Long Thik Boon</i> [1996] 2 SLR(R) 420.....	80
<i>Wilson v Pringle</i> [1987] QB 237.....	68
<i>Wishing Star Ltd v Jurong Town Corporation</i> [2008] 2 SLR(R) 909.....	55
<i>With v O'Flanagan</i> [1936] Ch 575.....	54
<i>Woodland v Swimming Teachers Association</i> [2013] WLR 1227.....	62, 63
<i>X (Minors) v Bedfordshire County Council</i> [1995] 2 AC 633.....	67
<i>Yeap Beng San Louis v Choo Pit Hong Peter</i> [1999] 1 SLR(R) 397.....	75

### APPENDIX 3: CASE SUMMARIES

	<p><b><i>BDA v Dominico Quirino</i></b> [2015] EWHC 2974</p> <p>Damages</p>																
Facts	The plaintiff, a 28-year-old woman, was subject to systematic sexual abuse between 2001 and 2005. The plaintiff was raped, groomed, and touched by her Karate instructor. The plaintiff suffered clinical depression, experienced psychosexual difficulties, and the probability of the recurrence of depression was 20% per year.																
Holding	<ul style="list-style-type: none"> <li>The following damages were awarded:</li> </ul> <table style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;">Type of Damage</th> <th style="text-align: right;">Amount</th> </tr> </thead> <tbody> <tr> <td>PSLA</td> <td style="text-align: right;">£46,000</td> </tr> <tr> <td>Aggravated damages</td> <td style="text-align: right;">£9,000</td> </tr> <tr> <td>Disadvantage on labour market</td> <td style="text-align: right;">£30,000</td> </tr> <tr> <td>Future treatment costs</td> <td style="text-align: right;">£9,600</td> </tr> <tr> <td>Past and future loss of earnings</td> <td style="text-align: right;">£75,000</td> </tr> <tr> <td>Other past costs</td> <td style="text-align: right;">£2,000</td> </tr> <tr> <td><b>Total</b></td> <td style="text-align: right;"><b>£171,600</b></td> </tr> </tbody> </table>	Type of Damage	Amount	PSLA	£46,000	Aggravated damages	£9,000	Disadvantage on labour market	£30,000	Future treatment costs	£9,600	Past and future loss of earnings	£75,000	Other past costs	£2,000	<b>Total</b>	<b>£171,600</b>
Type of Damage	Amount																
PSLA	£46,000																
Aggravated damages	£9,000																
Disadvantage on labour market	£30,000																
Future treatment costs	£9,600																
Past and future loss of earnings	£75,000																
Other past costs	£2,000																
<b>Total</b>	<b>£171,600</b>																

	<p><b><i>Benber Dayao Yu v Jacter Singh</i></b> [2017] 5 SLR 316</p> <p>Harassment</p>
Facts	<p>The appellant was a former employee of the respondent (the defendant at first instance), who owned a sports coaching company. After the appellant left the respondent's employ, the respondent posted a Web post on his business website stating that the appellant's employment had been terminated, that the appellant had made misrepresentations regarding his qualifications, that the appellant had a molestation case pending against him in the Philippines, and that the appellant's training methods had caused injuries to the athletes he had coached.</p> <p>The appellant requested that the respondent remove the Web post but the respondent refused. The appellant sought a protection order in relation to a webpage posted on the internet by the respondent, seeking an order for the respondent to take down the Web post.</p>
Holding	<ul style="list-style-type: none"> <li>The respondent's conduct fell within both sections 3 and 4 of the Protection from Harassment Act.</li> </ul> <p>[40]: "...the respondent had propagated half-truths or outright lies to persuade readers to see (and shun) the appellant not only as a liar, fraudster and cheat, but as an incorrigible</p>

	<p>serial molester. He was adamant on conveying the false impression that the appellant was both factually and legally guilty of molestation despite the fact that he has neither been charged with nor convicted of any such offence.”</p> <p>[42]: “...the Web post, when read as a whole, was intended to show that the appellant was guilty of molestation and was a repeat offender who somehow managed to evade detection and prosecution for other numerous unreported cases.”</p> <ul style="list-style-type: none"> <li>• What amounts to reasonable conduct is heavily fact-specific, but the Court will consider the nature of the allegedly offending act in question, the context in which those acts occurred, and the effect of those actions on the victim.</li> </ul> <p>[44]: “...[the Web post] was patently a vituperative post. The respondent’s motive was to ‘name and shame’ the appellant. He was out to disgrace and denigrate the appellant, while ostensibly seeking to warn readers about the appellant’s bad character and criminal proclivities. The nature and context of the respondent’s actions clearly showed that they could not be regarded as reasonable conduct by any measure.”</p> <p>[48]: “In my view, the Web post read as a whole constituted a personal attack on the appellant on all fronts. This was manifestly not reasonable conduct.”</p>
--	--

	<p><b>C v WH</b> [2015] EWHC 2687</p> <p>Damages</p>										
Facts	The plaintiff was found to have been groomed by a teacher. Indecent photographs of the plaintiff were found on the defendant’s phone. It was alleged that the plaintiff had also been raped and forced to perform oral sex on the defendant.										
Holding	<ul style="list-style-type: none"> <li>• The court found that the plaintiff had been groomed, sexual abuse had occurred (including sexual touching), but that the rape and oral sex had not taken place.</li> <li>• The following damages were awarded:</li> </ul> <table style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;">Type of Damage</th> <th style="text-align: left;">Amount</th> </tr> </thead> <tbody> <tr> <td>General damages</td> <td>£35,000</td> </tr> <tr> <td>Aggravated damages</td> <td>None awarded</td> </tr> <tr> <td>Special damages</td> <td>£16,370</td> </tr> <tr> <td><b>Total</b></td> <td><b>£51,370</b></td> </tr> </tbody> </table> <ul style="list-style-type: none"> <li>• In assessing general damages, the court took into account the fact that the claimant had suffered an adjustment disorder with increased anxiety, self-harm, social difficulties and a decrease in her self-esteem.</li> <li>• The court also awarded the claimant £10,000 for handicap on the labour market as a result of the emotional manipulation and abuse.</li> </ul>	Type of Damage	Amount	General damages	£35,000	Aggravated damages	None awarded	Special damages	£16,370	<b>Total</b>	<b>£51,370</b>
Type of Damage	Amount										
General damages	£35,000										
Aggravated damages	None awarded										
Special damages	£16,370										
<b>Total</b>	<b>£51,370</b>										

	<p><b><i>Chai Kang Wei Samuel v Shaw Linda Gillian</i></b>  [2010] 3 SLR 587</p> <p>Damages</p>
Facts	<p>The respondent was injured in a motor accident when the appellant lost control of his car and collided with a number of people, the respondent included. The respondent sustained traumatic brain injury as a result of a fracture at the base of her skull. She sued the appellant and interlocutory judgment for full liability was entered against the appellant by consent, with damages to be assessed by the court.</p> <p>Prior to the accident, she was working as a physiotherapist. Following the accident, while on medical leave, the respondent performed some casual data entry and analysis work for a few months, and pursued a full-time degree. The respondent's disabilities affected her ability to work long hours, attend to patients in wards, and physically assist patients.</p>
Holding	<ul style="list-style-type: none"> <li>• [41]-[42]: The amount that the respondent earned while performing casual data entry was deducted from the award for losses of pre-trial earnings. The amount that the respondent earned during this period could not be pro-rated and extended to cover the entire period of review. The respondent, due to the injuries she suffered, was on medical leave and had no obligation to undertake work.</li> <li>• [37]: Loss of earning capacity was awarded as there was a real risk that she could lose her employment post-accident.</li> </ul>

	<p><b><i>Chandran a/l Subbiah v Dockers Marine Pte Ltd</i></b>  [2010] 1 SLR 786</p> <p>Tort – Non-delegable duty</p>
Facts	<p>The appellant worked for the respondent as a stevedore. The appellant was instructed by the respondent to move cargo containers on board a vessel, the Tasman Mariner (“the vessel”). 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.</p> <p>While the appellant was working on board the vessel, a ladder on which the appellant was standing suddenly detached from the hull of the vessel. As a result, the appellant sustained severe injuries. The appellant commenced proceedings to claim damages from the respondent.</p>
Holding	<ul style="list-style-type: none"> <li>• An employer owes his/her employee a non-delegable duty of care to ensure his/her personal safety at the workplace (even when the employee is temporarily sent to work on someone else's premises).</li> <li>• A duty of care is owed regardless whether the sub-contractor or the main employer was careless. This is important to show that even if the job was subcontracted out, the main employer can still be held responsible.</li> <li>• [17]: “A distinctive feature of the employer's duty of care to his employees for their safety is that it is <i>personal</i> and therefore <i>non-delegable</i>. This means that the employer cannot escape liability simply by baldly asserting that another party was negligent and responsible for the employee's injury.”</li> </ul>

	<p><b><i>FKB v Lampitt</i></b>  [2015] EWHC 3368</p> <p>Damages</p>																		
Facts	<p>The claimant, a 23-year-old woman, sustained psychiatric injuries as a result of serious sexual, physical and emotional abuse between 2002 and 2006. She suffered chronic dysthymia and post-traumatic stress disorder, the symptoms of which were likely to be alleviated by psychological treatment. The claimant was abused by her mother's partner, including being watched whilst she bathed, and inappropriate touching of her breasts and genitals. There was also digital penetration and forced penetration. The abuse occurred several times a week for four years with increased severity over time.</p>																		
Holding	<ul style="list-style-type: none"> <li>The following damages were awarded: <table border="0" style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;"><b>Type of Damage</b></th> <th style="text-align: right;"><b>Amount</b></th> </tr> </thead> <tbody> <tr> <td>General damages</td> <td style="text-align: right;">£65,000</td> </tr> <tr> <td>Aggravated damages</td> <td style="text-align: right;">£15,000</td> </tr> <tr> <td>Past loss of earnings</td> <td style="text-align: right;">£43,500</td> </tr> <tr> <td>Past education costs</td> <td style="text-align: right;">£17,895</td> </tr> <tr> <td>Disadvantage on labour market</td> <td style="text-align: right;">£20,000</td> </tr> <tr> <td>Future loss of earnings</td> <td style="text-align: right;">£2,000</td> </tr> <tr> <td>Future treatment costs</td> <td style="text-align: right;">£2,925</td> </tr> <tr> <td><b>Total</b></td> <td style="text-align: right;"><b>£166,320</b></td> </tr> </tbody> </table> </li> <li>In assessing general damages, the court took into consideration that fact that the victim suffered a significant period of persistent abuse at an important stage of her adolescent development.</li> <li>In assessing aggravated damages, the court took into account the defendant's denial of the allegations and the fact that the plaintiff had to undergo the added trauma of giving evidence in criminal proceedings.</li> <li>In assessing damages for loss of earnings, the court used the earnings of probation officer as basis for calculation since the plaintiff claimed that this was her ambition, and the court was of the view that it was a reasonable goal for her to aim for.</li> </ul>	<b>Type of Damage</b>	<b>Amount</b>	General damages	£65,000	Aggravated damages	£15,000	Past loss of earnings	£43,500	Past education costs	£17,895	Disadvantage on labour market	£20,000	Future loss of earnings	£2,000	Future treatment costs	£2,925	<b>Total</b>	<b>£166,320</b>
<b>Type of Damage</b>	<b>Amount</b>																		
General damages	£65,000																		
Aggravated damages	£15,000																		
Past loss of earnings	£43,500																		
Past education costs	£17,895																		
Disadvantage on labour market	£20,000																		
Future loss of earnings	£2,000																		
Future treatment costs	£2,925																		
<b>Total</b>	<b>£166,320</b>																		

	<p><b>GLB v TH</b> [2012] EWHC 3904</p> <p>Damages</p>														
Facts	<p>The plaintiff was sexually abused by her grandfather who also attempted to rape her twice. The abuse occurred once every one or two months for a period of five years, between the ages of 11 and 16. The plaintiff also suffered a delay to her planned career as a primary school teacher as a result of the psychiatric injuries she suffered.</p> <p>It should be noted that aggravated damages were awarded upon the lawyer's submission that there had been a breach of trust and that the plaintiff had experienced emotional upheaval. The court also took into consideration the fact that the defendant had persisted in denying his guilt.</p>														
Holding	<ul style="list-style-type: none"> <li>The following damages were awarded:</li> </ul> <table style="margin-left: 40px;"> <thead> <tr> <th style="text-align: left;">Type of Damage</th> <th style="text-align: right;">Amount</th> </tr> </thead> <tbody> <tr> <td>Pain and suffering and loss of amenity</td> <td style="text-align: right;">£67,500</td> </tr> <tr> <td>Aggravated damages</td> <td style="text-align: right;">£15,000</td> </tr> <tr> <td>Past loss of earnings</td> <td style="text-align: right;">£45,000</td> </tr> <tr> <td>Future loss of earnings</td> <td style="text-align: right;">£40,000</td> </tr> <tr> <td>Disadvantage on the labour market</td> <td style="text-align: right;">£20,000</td> </tr> <tr> <td><b>Total</b></td> <td style="text-align: right;"><b>£187,500</b></td> </tr> </tbody> </table> <ul style="list-style-type: none"> <li>In assessing damages for pain, suffering and loss of amenity, the court took into consideration that fact that the abuse took place over a period of five years during a formative time of her life, and that the assaults were of a serious nature.</li> <li>In deciding on the amount of aggravated damages, the court noted the defendant's persistent denial of guilt and liability.</li> </ul>	Type of Damage	Amount	Pain and suffering and loss of amenity	£67,500	Aggravated damages	£15,000	Past loss of earnings	£45,000	Future loss of earnings	£40,000	Disadvantage on the labour market	£20,000	<b>Total</b>	<b>£187,500</b>
Type of Damage	Amount														
Pain and suffering and loss of amenity	£67,500														
Aggravated damages	£15,000														
Past loss of earnings	£45,000														
Future loss of earnings	£40,000														
Disadvantage on the labour market	£20,000														
<b>Total</b>	<b>£187,500</b>														

	<p><b>Kim Gwang Seok v Public Prosecutor</b> [2012] 4 SLR 821</p> <p>Evidence – Video conferencing – <i>Criminal Procedure Code</i></p>
Facts	<p>The appellant was a Korean national who was charged with an offence under the Misuse of Drugs Act for 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.</p>
Holding	<ul style="list-style-type: none"> <li>[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</li> </ul>

	<p>involving drug offences, which was exactly the situation in the present case.”</p> <ul style="list-style-type: none"> <li>• [27]-[28]: 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 evidence by witnesses, was to be physically conducted in a courtroom. The manner in which s 364A itself was framed reinforced this point: s 364A 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.</li> <li>• 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 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.</li> </ul>
--	---

	<p style="text-align: center;"><b><i>Peters Roger May v Pinder Lillian Gek Lian</i></b> [2006] 2 SLR(R) 381</p> <p style="text-align: center;">Evidence – Video conferencing</p>
Facts	<p>Proceedings involved a grant of probate, with an ancillary determination of the domicile of the deceased. The respondent (the deceased’s wife) requested for a stay of proceeding in Singapore, arguing that England was the more appropriate forum for the determination of the proceedings. One of the arguments raised by the respondent in support of her position was that several witnesses resided in England or could more easily get to England as compared to Singapore.</p> <p>The Assistant Registrar noted in her judgment that the location of witnesses was not a major factor as video-linking facilities, both in England and Singapore would enable witnesses to testify from remote locations in any case. However, the Assistant Registrar decided that England was the more appropriate forum on other grounds. The Executor of the deceased’s estate appealed.</p>
Holding	<ul style="list-style-type: none"> <li>• 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.</li> </ul> <p>[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 <i>forum non conveniens</i> 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</p>

	<p>a yardstick in assessing the appropriateness of a forum.”</p> <ul style="list-style-type: none"> <li>• The threshold to granting leave for video conferencing ought to be relatively low.</li> </ul> <p>[27]: “The respondent has not advanced any arguments, cogent or otherwise, why adducing evidence by video link in this case would by 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 via 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.”</p>
--	---

	<p><b><i>Public Prosecutor v Foo Chee Ring</i></b> [2008] SGDC 298</p> <p>Damages</p>
Facts	<p>The district judge sentenced the accused to a total of nine weeks’ imprisonment for voluntarily causing hurt to his domestic worker by slapping her in the face three times, kicking her lower limbs, and banging her head against a wall three times.</p> <p>Prior to the commencement of the trial, the defence applied for the three charges against the accused to be compounded. The accused offered to compound the charges by paying the complainant a sum of \$10,000 and apologising to her in open court. The complainant was agreeable to compounding the charges on such terms but the prosecution opposed such composition.</p>
Holding	<ul style="list-style-type: none"> <li>• The court withheld its consent to the composition of the charges brought against the accused in view of the strong element of public interest involved when a foreign domestic maid is hurt or abused.</li> <li>• The judge ordered the accused to pay S\$6,000 in compensation for loss of earnings. The domestic worker was unable to work in Singapore for 18 months pending the trial. The judge noted that a compensation order is not punishment for an offence nor is it an alternative to a sentence; it is instead a means of providing redress to a victim of crime.</li> </ul>

	<p><b><i>Public Prosecutor v Tong Chew Wei</i></b> [2009] SGDC 202</p> <p>Damages</p>
Facts	The accused was found guilty of seven charges of voluntarily causing hurt to his domestic worker by hitting her with a broomstick, stamping on her feet, scalding her with a mug of hot water, punching her in the fact, grabbing and pulling her hair, and using his elbow to hit her back. The abuse occurred over a two month period.
Holding	<ul style="list-style-type: none"> <li>The district judge sentenced the accused to a total of 20 months' imprisonment. In addition, the judge ordered that S\$6,480 be paid in compensation to the domestic worker for loss of earnings.</li> <li>The judge calculated this figure by multiplying the domestic worker's weekly salary (S\$270) by the number of months she was unable to work (24 months).</li> </ul>

	<p><b><i>Sonica Industries v Fu Yu Manufacturing Ltd</i></b> [1993] 3 SLR(R) 119</p> <p>Evidence – Video conferencing – Evidence Act</p>
Facts	<p>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.</p> <p>There was evidence that the plaintiffs had tried to arrange for Mr Kawamura to attend the trial in Singapore, but that such efforts did not materialise.</p>
Holding	<ul style="list-style-type: none"> <li>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.</li> </ul> <p>[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."</p> <p>[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 in the proceedings."</p> <ul style="list-style-type: none"> <li>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 the</li> </ul>

video-conferencing were granted against prejudice to the plaintiffs if the 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 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."

	<p style="text-align: center;"><b><i>Tam Tak Chuen v Khairul bin Abdul Rahman and others</i></b>  [2009] 2 SLR(R) 240</p> <p style="text-align: center;">Contract – Illegal threat</p>
<p>Facts</p>	<p>The plaintiff and the first defendant jointly owned a group of clinics. The first defendant obtained video footage of the plaintiff having sexual relations with a clinic employee and confronted the plaintiff with the same at a meeting.</p> <p>The first defendant presented the plaintiff with three options: one, the first defendant would offer to buy out the plaintiff's half share in the companies for \$50,000 and ask the plaintiff to resign from all his directorships; two, the plaintiff would buy out the first defendant's half share instead and the first defendant would resign; or three, the first defendant would apply to court for the companies to be wound up, and the incriminating video footage would be tendered to court as evidence.</p> <p>The plaintiff agreed to sell his shares to the first defendant for \$50,000. The plaintiff subsequently brought an action seeking a declaration that his agreement was procured under duress.</p>
<p>Holding</p>	<ul style="list-style-type: none"> <li>• [50]: The four categories of circumstances that indicate when a threat of lawful action that is not unlawful is illegitimate are: <ul style="list-style-type: none"> <li>○ where the threat is an abuse of legal process;</li> <li>○ where the demand is not made bona fide;</li> <li>○ where the demand is unreasonable; and</li> <li>○ where the threat is considered unconscionable in light of all the circumstances.</li> </ul> </li> <li>• Although the threat made by the defendant was not unlawful, he acted with a collateral motive and the presence of that motive made the threat illegitimate.</li> </ul> <p>[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."</p> <p>[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."</p> <p>[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 lawful action, Dr Khairul was acting with a collateral motive and the presence of that motive made the threat illegitimate."</p> <ul style="list-style-type: none"> <li>• His threat was also illegitimate on the basis that the demands were unreasonable.</li> </ul> <p>[58]: "As I have held, the true value of the plaintiff's shares in the J Companies was far more</p>

	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."
--	--

	<p style="text-align: center;"><b><i>Tay Wee Kiat and another v Public Prosecutor and another appeal</i></b> [2018] SGHC 42</p> <p style="text-align: center;"><b><i>Tay Wee Kiat and another v Public Prosecutor and another appeal</i></b> [2018] SGHC 114</p> <p style="text-align: center;">Damages</p>
Facts	<p>The appellants were convicted of various offences for abusing their domestic worker. The first appellant was convicted after trial of:</p> <ul style="list-style-type: none"> <li>• 10 charges of voluntarily causing hurt to the domestic worker for, amongst other things, slapping her, hitting her head with a bundle of three canes tied together, and pushing her head against a cabinet.</li> <li>• One charge for contravening s 204B(1)(a) of the Penal Code, for offering to pay the victim's full salary and to send her back to Indonesia on the condition that she abstain from reporting him for domestic worker abuse.</li> <li>• One charge for contravening s 182 of the Penal Code for instigating the victim to lie to the police that he had not physically abused her.</li> </ul> <p>The second appellant was convicted of two charges of voluntarily causing hurt to the victim, one for slapping her face and one for punching her forehead.</p> <p>In addition to the physical abuse inflicted on the domestic worker, the appellants also caused her to suffer "humiliating and degrading" abuse as well. For instance, on one occasion, the first appellant forced the domestic worker to stand on one leg on a stool while holding another stool in her hand. She was made to maintain the position for half an hour, with a small plastic bottle shoved into her mouth.</p>
Holding	<ul style="list-style-type: none"> <li>• The court ruled that the domestic worker should be compensated for pain and suffering as well as lost wages.</li> </ul> <p>[19]: In its submissions on compensation, the prosecution suggested that the appellants should pay S\$500 for each incident of abuse, taking into account the physical and psychological harm suffered by the domestic worker.</p> <p>The court agreed and the appellants were ordered to pay compensation of S\$6,000 for the pain and suffering caused (S\$5,000 by the first appellant and S\$1,000 by the second appellant) as well as S\$1,800 for loss of earnings (S\$450 multiplied by the four months the domestic worker was unable to work). The total compensation awarded was S\$7,800.</p> <ul style="list-style-type: none"> <li>• The court stressed that criminal compensation is generally made as a matter of course in domestic worker abuse cases, noting changes via the Criminal Justice Reform Act 2018, which further requires a court to give reasons if it chooses not to order compensation. In the supplementary judgment, Justice See stated: "We also consider it appropriate to compensate [the victim] for the physical and psychological injuries inflicted by the offenders, for which they would have been liable in tort."</li> <li>• The following damages were awarded:</li> </ul>

Type of Damage	Amount (S\$)	Remarks
Payable by the first appellant:		
Hurt to the victim on 10 occasions	5,000	S\$500 per incident of abuse (with reference to <i>The Guidelines for the Assessment of General Damages in Personal Injury Cases</i> )
Compensation for four months of unemployment	900	Salary at S\$450 per month of unemployment
Payable by the second appellant:		
Hurt to the victim on two occasions	1,000	S\$500 per incident of abuse (with reference to <i>The Guidelines for the Assessment of General Damages in Personal Injury Cases</i> )
Compensation for four months of unemployment	900	Salary at S\$450 per month of unemployment
<b>Total</b>	<b>7,800</b>	

<b><i>Ting Siew May v Boon Lay Choo and another</i></b> [2014] 3 SLR 609  Contract – Illegality	
Facts	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.
Holding	<ul style="list-style-type: none"> <li>• [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.</li> <li>• [70]: This process requires the court to consider a number of general factors including: <ul style="list-style-type: none"> <li>○ whether allowing the claim would undermine the purpose of the prohibiting rule;</li> <li>○ the nature and gravity of the illegality;</li> <li>○ the remoteness or centrality of the illegality to the contract;</li> <li>○ the object, intent and conduct of the parties; and</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ the consequences of denying the claim.</li> <li>● [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.</li> </ul>
--	---

	<p><b><i>Woodland v Swimming Teachers Association</i></b> [2013] WLR 1227</p> <p>Tort – Non-delegable duty</p>
Facts	The plaintiff was a student at a school in the defendant local education authority's area. The plaintiff suffered a severe brain injury during a swimming lesson arranged by the school at a pool run by another local authority. The lesson was supervised by a swimming teacher and a life guard, which were both employed by an independent contractor who organised and provided the lesson.
Holding	<ul style="list-style-type: none"> <li>● [6]: "English law has recognised two broad categories in which a non-delegable duty has been held to arise. The first is a large, varied and anomalous class of cases in which the defendant employs an independent contractor to perform some function which is inherently hazardous or liable to become so in the course of his work."</li> <li>● [7]: "The second category can be defined by three characteristics: first, the duty arises not from the negligent character of the act itself but because of an antecedent relationship between the defendant and the claimant. Second, the duty is a positive or affirmative duty to protect a particular class of persons against a particular class of risks, and not simply a duty to refrain from acting in a way that foreseeably causes injury. Third, the duty is by virtue of that relationship personal to the defendant. The work required to perform such a duty may well be delegable, and usually is. But the duty itself remains the defendant's."</li> <li>● [22]: "There are five features of cases where a non-delegable duty would arise: <ul style="list-style-type: none"> <li>○ The claimant is a patient or a child, or for some other reason is especially vulnerable or dependent on the protection of the defendant against the risk of injury. Other examples are likely to be prisoners and residents in care homes.</li> <li>○ There is an antecedent relationship between the claimant and the defendant, independent of the negligent act or omission itself, (i) which places the claimant in the actual custody, charge or care of the defendant, and (ii) from which it is possible to impute to the defendant the assumption of a positive duty to protect the claimant from harm, and not just a duty to refrain from conduct which will foreseeably damage the claimant. It is characteristic of such relationships that they involve an element of control over the claimant, which varies in intensity from one situation to another, but is clearly very substantial in the case of schoolchildren. The claimant has no control over how the defendant chooses to perform those obligations, i.e. whether personally or through employees or through third parties.</li> <li>○ The defendant has delegated to a third party some function which is an integral part of the positive duty which he has assumed towards the claimant; and the third party is exercising, for the purpose of the function thus delegated to him, the defendant's custody or care of the claimant and the element of control that goes with it.</li> <li>○ The third party has been negligent not in some collateral respect but in the performance of the very function assumed by the defendant and delegated by the defendant to him."</li> </ul> </li> </ul>

## **APPENDIX 4: SAMPLE CONTRACTS – EMPLOYMENT AGREEMENT BETWEEN EMPLOYER AND FOREIGN DOMESTIC WORKER (SINGAPORE)<sup>469</sup>**

---

<sup>469</sup> ASEAN Website, “Singapore Policy Repository on Migrant Workers’ Legislation and Practices of ASEAN Member States” <https://asean.org/singapore-policy-repository-on-migrant-workers-legislation-and-practices-of-asean-member-states/> (accessed 19 September 2018)

**STANDARD EMPLOYMENT CONTRACT  
BETWEEN FOREIGN DOMESTIC WORKER AND EMPLOYER**

**Employment Agency Name :** \_\_\_\_\_  
**License No. :** \_\_\_\_\_  
**Reference No. :** \_\_\_\_\_

This employment contract is made between (a) The Employer and (b) The Foreign Domestic Worker (FDW) in *Section A*, based on the terms contained in *Section B*.

A copy of the Contract (with all blanks filled in and options selected) and Job Scope Sheet (Annex A) translated into the FDW's language should be given to the FDW in her home country before she signs the contract.

The Schedules of Salary Payment and Loan (including loan for placement fee) Repayment (Annex B) shall be filled up at the same time the contract is signed.

**Section A: Particulars of Parties in Contract**

---

(a) The Employer

Full Name : \_\_\_\_\_  
NRIC/Passport No. : \_\_\_\_\_  
Address : \_\_\_\_\_

(b) The Foreign Domestic Worker (FDW)

Full Name : \_\_\_\_\_  
Work Permit No. : \_\_\_\_\_  
Passport No. : \_\_\_\_\_

**Section B: Terms of Contract**

---

Part I : Employment Period and Workplace

1. The FDW shall be employed by the Employer as a domestic worker for a period specified in the FDW's work permit.
2. The FDW shall work and reside only in the Employer's residence as specified in the FDW's work permit.

Part II : Responsibilities of the FDW

3. The FDW shall undertake to perform her work diligently and honestly at all times.
4. The FDW shall not take up, or be required by the Employer to take up, any other employment with any other person(s).

Part III : Remuneration and Benefits

5. The Employer shall pay the FDW wages of SGD \_\_\_\_\_ per month.
6. The salary shall be paid on the \_\_\_\_ day of every month.
7. The FDW shall acknowledge the amount received under her signature in the attached Schedule of Salary Payment (Annex B) as proof of payment. Where applicable, the FDW shall make a monthly loan (including loan for placement fee) repayment with the Employment Agency, through monthly payments to the employer in accordance with the Schedule of Loan (including loan for placement fee) Repayment in Annex B.
8. The salary will be paid by \*cash / crediting into the FDW's bank account (*delete where applicable*).
9. The Employer shall provide the FDW with suitable accommodation in accordance with MOM's guidelines, with a reasonable amount of privacy. Please tick where applicable:
  - Share a room with \_\_\_\_\_ child/children
  - Separate room
  - Others (please specify):  
\_\_\_\_\_  
\_\_\_\_\_
10. The Employer shall provide at least three adequate meals a day to the FDW, over and above the salary paid.
11. The Employer shall provide the FDW with \_\_\_\_\_ hours [**recommended 8 hours**] of continuous rest daily (except for occasional special-care cases), with reasonable rest periods during working hours.
12. The FDW shall be entitled to \*one / two / three / four rest day(s) a month, on a day mutually agreed (*\*delete where applicable*). If the rest day was not taken, the FDW shall be compensated in cash as agreed in writing between the employer and the FDW. If there is no such existing agreement, the accreditation body's prevailing compensation guideline shall apply.

13. Should both parties (Employer and FDW) agree to extend this contract, she (the FDW) shall be entitled to \_\_\_\_\_ days [**recommended 15 days**] of paid home leave (inclusive of a return ticket to her City of origin).
14. If the FDW does not wish to utilize her leave as stated in clause 13, the Employer shall pay the FDW \*a lump sum equivalent to the return ticket to her City of origin / a lump sum of S\$\_\_\_\_\_ (*delete where applicable*).
15. In the event that the FDW falls ill or suffers personal injury during the period of employment, except for the period the FDW leaves Singapore of her own volition and for her own personal purposes, the Employer shall bear all the necessary treatment costs, including medical consultation, medicine, hospitalization and others.
16. External communications shall be made available for the FDW and the employer must allow the FDW seek the advice/help of the relevant bodies/authorities such as the Employment Agency, Ministry of Manpower etc at all times.
17. The employer shall provide safe working conditions for the FDW at all times.

#### Part IV : Termination

18. Either party may terminate this Contract by giving \_\_\_\_\_ notice [**recommended at least one week**].
19. Either party may terminate the Contract without notice if either party is in breach of the work permit condition(s).
20. In cases where the employer decides to terminate the contract under any circumstances, the employer should ensure the FDW's proper upkeep until she is repatriated or transferred to another employer, whichever is applicable.
21. The employer shall be responsible to bear the cost of repatriation of the FDW at all times.
22. Upon termination or expiry of the contract, the Employer shall bear the cost of repatriating the FDW back to \_\_\_\_\_ [her town/city of origin] in \_\_\_\_\_ [country].
23. Should both parties agree to renew this employment relationship, a new employment contract shall be signed by both the employer and the FDW.

Part V : Others

24. Any substantial variation or addition to the terms of this Contract shall be deemed void unless made with the consent of both parties to the Contract and a witness through signatories.
25. In the event of any conflict or inconsistency between any term of this Contract (including the Annexes) in the English language and any translation thereof in any other language, the English language version of this Contract shall prevail.
26. Any dispute arising from this Contract shall be referred to the Employment Agency for mediation. If it cannot be settled, the dispute can be referred at the election of either party to an alternative dispute resolution mechanism.
27. In the case whereby any term of the contract contradicts the existing Work Permit conditions or any Singapore government regulations, the latter two shall supersede.

**Section C: Employer's Declaration**

---

I have read and understood the contents of this Contract, and hereby agree to abide by it.

The Employer's Signature : \_\_\_\_\_

Witnessed by (Name & Signature) : \_\_\_\_\_

Date : \_\_\_\_\_

**Section D: Foreign Domestic Worker's Declaration**

---

I have read and understood the contents of this Contract, and hereby agree to abide by it.

The Foreign Domestic Worker's Signature : \_\_\_\_\_

Witnessed by (Name & Signature) : \_\_\_\_\_

Date : \_\_\_\_\_

**Job Scope Sheet for Foreign Domestic Worker**

**Employment Agency Name :** \_\_\_\_\_  
**License No. :** \_\_\_\_\_ **Reference No. :** \_\_\_\_\_

This job scope sheet pertains to the job offer made by the *Employer* to the *FDW*. It shall be translated into the FDW's language and given to her before she signs the employment contract.

---

Particulars of Parties

*The Employer*

Full Name : \_\_\_\_\_ NRIC/Passport No. : \_\_\_\_\_

*The Foreign Domestic Worker (FDW)*

Full Name : \_\_\_\_\_ Passport No. : \_\_\_\_\_

Job Scope

28. Persons in household of Employer's family:

- \_\_\_\_\_ adults
- \_\_\_\_\_ young adults aged 13 to 18
- \_\_\_\_\_ children aged 5 to 12
- \_\_\_\_\_ children aged between 3 to 5
- \_\_\_\_\_ infants/babies below 3
- \_\_\_\_\_ person(s) requiring constant care and attention (excluding babies)

29. The FDW shall be required to perform domestic duties as follows (to tick where applicable):

- Household chores
- Cooking
- Looking after aged person(s) in the household [constant attention is \*required/not required]
- Baby-sitting
- Child-minding
- Others (please specify):  
\_\_\_\_\_  
\_\_\_\_\_

30. Place of Work (to tick where applicable):

- a) House Type:
  - Landed Property
  - Condominium/ Private Apartment
  - HDB 5-room or larger
  - HDB \_\_\_\_\_-Room Flat (*specify no. of rooms*)
  - Others \_\_\_\_\_ (*specify*)
- b) Number of Bedrooms in the house: \_\_\_\_\_

Annex B

**Schedules of Salary Payment and Loan (including loan for placement fee) Repayment**

Name of Employer: _____							
Name of FDW: _____							
Monthly Salary of FDW: SS _____							
Total Amount of Loan (including loan for placement fee): SS _____							
	<b>Schedule of Salary Payment</b>			<b>Schedule of Loan (including loan for placement fee) Repayment</b>			
	Month/ Year	Date of Salary Paymt	FDW Acknowledgemt (signature)	Monthly Loan Repaymt*	Date of Repaymt	Employer's Acknowledgemt (Signature)	FDW Acknowledgemt (Signature)
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							
13							
14							
15							
16							
17							
18							
19							
20							
21							

	Schedule of Salary Payment			Schedule of Loan (including loan for placement fee) Repayment			
	Month/ Year	Date of Salary Paymt	FDW Acknowledgement (signature)	Monthly Loan Repaymt*	Date of Repaymt	Employer's Acknowledgement (Signature)	FDW Acknowledgement (Signature)
22							
23							
24							
** Total Amount (SS) :							

\* Delete rows where necessary.

\*\* The total amount should be filled in at the point of acknowledging this schedule, and it shall be the sum total of the monthly loan repayments.

I hereby declare that I understand and agree with the monthly salary and total amount of loan indicated above.

\_\_\_\_\_  
Name/ Signature of FDW

\_\_\_\_\_  
Name/ Signature of Employer

*Witnessed by EA Representative:*

Name/ Signature: \_\_\_\_\_

**APPENDIX 5: SAMPLE CONTRACTS – EMPLOYMENT AGREEMENT BETWEEN  
EMPLOYER AND FOREIGN DOMESTIC WORKER IN ENGLISH  
(INDONESIA)<sup>470</sup>**

---

<sup>470</sup> International Domestic Workers Federation (“IDWF”) Website, “Indonesia Standard Contracts” <<http://www.idwfed.org/myfairhome/download/employment-contract/indonesia>> (accessed 19 September 2018).

# EMPLOYMENT AGREEMENT BETWEEN EMPLOYER AND DOMESTIC WORKERS

The undersigned is:

Name :  
Date of Birth / age :  
ID cards :  
Address :

Acting on behalf of/as an Employer, herein after referred to as the FIRST PARTY.

Name :  
Date of Birth / age :  
ID cards :  
Address :

Acting on behalf of/as a Domestic Workers, herein after referred to as the SECOND PARTY

With this the FIRST and SECOND PARTY agreed to create a employment agreement with the following terms:

## Article 1

1. Agreement is valid for work for 1 yr, as of April 1<sup>st</sup>, 2016 to April 1<sup>st</sup>, 2017.
2. If in period of employment agreements the SECOND PARTY terminate of their own accord, then:
  - a. SECOND PARTY shall notify in advance no later than 2 (two) weeks prior to the date of resignation
  - b. SECOND PARTY entitled to a salary through the end of the time worked for the FIRST PARTY
3. If in period of employment agreements the FIRST PARTY terminates the SECOND PARTY
  - a. FIRST PARTY shall notify at least 1 (one) month prior to the date of termination
  - b. FIRST PARTY shall provide severance of 3 (three) months wages SECOND PARTY.

## Article 2

1. The SECOND PARTY has job description in the annex to this agreement
2. The Working Hours as follows:
  - a. 3 days per week – Perferably Monday, Wednesday and Friday
  - b. For half days

### Article 3

The work provided by the SECOND PARTY, the FIRST PARTY is obliged to fulfill the rights of the SECOND PARTY as follows:

1. Wage of Rp 2.250.000, - per month, which will be paid in cash every 1<sup>st</sup> day of the month
2. Holiday Allowance (THR) for 1 month wage will be paid no later than 14 days before the day
3. Break for meal interval and rest between working hours
4. SECOND PARTY will get the following days off
  - a. National/Public Holidays
  - b. National Domestic Workers Day
  - c. International Domestic Workers Day
  - d. 6 working days for Annual Leave (equivalent of 2 weeks)
5. In the condition that the FIRST PARTY requests the SECOND PARTY to work additional days beyond what is outlined in Article 2 or on a national/public holiday overtime wages will be paid
  - a. Overtime wages will be Rp 250.000 per day
6. In condition the SECOND PARTY getting sick, the SECOND PARTY gets rest days based on doctor's letter
7. Social security through BPJS Health and BPJS Ketenagakerjaan
8. Freedom of association
9. Annually wage increasing by 10% of wage if the Employment Agreement is extended

### Article 4

1. FIRST PARTY shall provide information and guidance to SECOND PARTY regarding:  
Who are the members of the household of the employer and the authorities give tasks on SECOND PARTY as attachments of this Employment Agreement;
2. Situation, condition, layout equipment-household furniture, sanitary room, kitchen, tools and work equipment and its usage instructions, rules in the household, the household environment, RT, RW, Kelurahan, and facilities for SECOND PARTY, which deals with the task of SECOND PARTY and the working relationship between the Parties;
3. FIRST PARTY will have basic First Aid supplies;
4. FIRST PARTY will advise on the nearest of Medical Service, Police Office for First Aid;
5. FIRST PARTY will advise a listing of telephone numbers in case of emergency

### Article 5

The FIRST PARTY and SECOND PARTY obligation of mutual respect and comply with the agreements set forth in the employment agreement

### Article 6

The things that have not been regulated in the employment agreement will be set later in accordance with the agreement of both parties

Article 7

1. If both parties have a disagreement, or does not meet the provisions of the agreement referred to in this work, it will be a discussion first
2. If the first stage is not reached completion, then continue in the second phase involves mediator who is agreed by the both parties
3. In the situation deliberation and mediation can not reach an agreement, then the settlement issue will be done through legal procedures.

Similarly, the employment agreement was made without pressure or coercion from any party

Approved and signed,

in:

Date :

By :

FIRST PARTY

SECOND PARTY

-----

-----

WITNESS

WITNESS

-----

-----

Appendix of the Employment Agreement: Job Descriptions of the SECOND PARTY

General tidying of house		Laundry – machine wash	
Making of beds		Hanging out of laundry	
Vacuuming of carpets		Ironing	
Vacuuming of upholstery		Defrosting and cleaning fridge & freezer	
Dusting		Cleaning of windows and glass doors inside and out	
Wiping down of all appliances e.g. T.V etc		Cleaning of all used equipment e.g. vacuum cleaner	
Cleaning of walls, light switches, doors etc		Packing away of groceries	
Cleaning of toilets, basins, baths, showers, taps etc.		Removal of refuse for collection	
Mopping of tiled/vinyl floors		Sweeping of outside patios, steps, etc	
Cleaning of inside of cupboards		Grocery shopping as needed	
Cleaning of stove and oven			
Preparation/cooking of breakfast			
Preparation/cooking of lunch			
Preparation/cooking of supper			
Washing Dishes			
Watering of some house plants			
Polishing of floors and verandas			

**APPENDIX 6: SAMPLE CONTRACTS – EMPLOYMENT AGREEMENT BETWEEN  
EMPLOYER AND FOREIGN DOMESTIC WORKER IN BAHASA INDONESIA  
(INDONESIA)<sup>471</sup>**

---

<sup>471</sup> International Domestic Workers Federation (“IDWF”) Website, “Indonesia Standard Contracts” <<http://www.idwfed.org/myfairhome/download/employment-contract/indonesia>> (accessed 19 September 2018).

Contoh Perjanjian Kerja

## **PERJANJIAN KERJA PEKERJA RUMAH TANGGA – PEMBERI KERJA**

Yang bertanda tangan dibawah ini :

Nama :  
Tgl. Lahir/usia :  
Kartu Identitas :  
Alamat :

Bertindak atas nama dan untuk diri sendiri sebagai Pemberi Kerja, yang selanjutnya disebut sebagai PIHAK PERTAMA.

Nama :  
Tgl. Lahir/usia :  
Kartu Identitas :  
Alamat :

Bertindak atas nama dan untuk diri sendiri sebagai PRT (Pekerja Rumah Tangga), yang selanjutnya disebut sebagai PIHAK KEDUA

Dengan ini PIHAK PERTAMA dan PIHAK KEDUA bersepakat untuk membuat perjanjian kerja dengan ketentuan sebagai berikut :

### Pasal 1

1. Perjanjian kerja ini berlaku selama ....., terhitung sejak tanggal .....Bulan.....Tahun.... sampai dengan tanggal .....Bulan.....Tahun.....
2. Apabila dalam masa perjanjian kerja PIHAK KEDUA berhenti atas kemauan sendiri, maka:
  - a. PIHAK KEDUA wajib memberitahukan dahulu paling lambat 2 (dua) minggu sebelum tanggal pengunduran diri
  - b. PIHAK KEDUA berhak mendapatkan upah berdasarkan perhitungan lamanya waktu bekerja dan biaya transport
3. Apabila dalam masa perjanjian kerja PIHAK PERTAMA memberhentikan PIHAK KEDUA, PIHAK PERTAMA wajib memberitahukan paling lambat 1 (satu) bulan sebelum tanggal pemberhentian
4. Apabila dalam masa perjanjian kerja PIHAK PERTAMA memberhentikan PIHAK KEDUA (sebelum masa perjanjian kerja berakhir) maka PIHAK PERTAMA wajib memberikan pesangon kepada PIHAK KEDUA.

### Pasal 2

1. PIHAK KEDUA berkewajiban menjalankan tugas-tugas/pekerjaan sebagaimana terurai dalam lampiran uraian tugas perjanjian ini

2. Waktu Kerja PIHAK KEDUA sebagai berikut :
  - a. Hari Senin sampai dengan Jum'at dari pukul ..... sampai dengan pukul ... dengan waktu istirahat selama ... jam pada pukul ... sampai dengan pukul ....
  - b. Hari Sabtu dari pukul ..... sampai dengan pukul ....

### Pasal 3

Atas kerja yang diberikan oleh PIHAK KEDUA, maka PIHAK PERTAMA berkewajiban memenuhi hak-hak PIHAK KEDUA sebagai berikut :

1. Upah sebesar Rp.....,- perbulan, yang akan dibayarkan setiap tgl..... secara .....
2. Tunjangan Hari Raya (THR) sebesar 1 bulan gaji yang akan dibayarkan sebelum hari raya
3. Waktu istirahat antar jam kerja
4. Upah lembur apabila PIHAK PERTAMA dengan persetujuan PIHAK KEDUA mempekerjakan PIHAK KEDUA melebihi waktu kerja
5. Hari libur mingguan (24 jam dalam seminggu)
6. Hari Libur pada hari Libur Nasional dan Hari PRT Nasional serta Hari PRT Internasional
7. Apabila PIHAK PERTAMA mempekerjakan PIHAK KEDUA pada hari libur, maka PIHAK KEDUA berhak mendapatkan uang pengganti libur sebesar Rp ..... untuk setiap 1 hari libur.
8. Cuti haid untuk PIHAK KEDUA
9. Mendapatkan cuti tahunan sebanyak sekurang-kurangnya 12 hari setiap tahun
10. Fasilitas makan yang layak 3 x sehari dan tempat tidur/istirahat yang sehat dan aman
11. Jaminan sosial berupa Jaminan Pemeliharaan Kesehatan, Jaminan Keselamatan dan Kecelakaan Kerja, Jaminan Hari Tua, Jaminan Pensiun dan Jaminan Kematian
12. Kebebasan berkumpul, berorganisasi dan berserikat
13. Kenaikan gaji secara periodik setahun sekali minimal sebesar .... dari jumlah gaji apabila Perjanjian Kerja diperpanjang

### Pasal 4

Pihak PERTAMA berkewajiban memberikan informasi kepada Pihak KEDUA mengenai:

1. Siapa yang menjadi anggota rumah tangga dari pemberi kerja dan berwenang memberi tugas pada Pihak KEDUA sebagaimana lampiran Perjanjian Kerja ini;
2. Situasi, kondisi, tata letak perlengkapan-perabot rumah tangga, ruang sanitasi, dapur, alat dan perlengkapan kerja beserta petunjuk penggunaannya, peraturan dalam rumah tangga, lingkungan sekitar rumah tangga, RT, RW, Kelurahan Pihak PERTAMA, dan fasilitas untuk Pihak KEDUA, yang berkaitan dengan tugas Pihak KEDUA dan hubungan kerja antara kedua belah Pihak;
3. Pertolongan Pertama Pada Kecelakaan;
4. Layanan Medis, Kepolisian terdekat untuk Pertolongan Segera;
5. Daftar Telepon Penting dan tata cara menghubunginya

Pasal 5

PIHAK PERTAMA Dan PIHAK KEDUA berkewajiban saling menghargai dan mentaati kesepakatan-kesepakatan yang tertuang dalam perjanjian kerja

Pasal 6

Hal-hal yang belum diatur dalam perjanjian kerja ini akan diatur kemudian sesuai dengan kesepakatan kedua belah pihak

Pasal 7

1. Apabila kedua belah pihak mengalami perselisihan, atau tidak memenuhi ketentuan-ketentuan sebagaimana dimaksud dalam perjanjian kerja ini, maka akan diselesaikan secara musyawarah terlebih dulu
2. Apabila tahap pertama tidak tercapai penyelesaian, maka berlanjut pada tahap kedua mediasi dengan melibatkan pihak Dinas Ketenagakerjaan atau lembaga swadaya masyarakat atau serikat buruh/pekerja di wilayah kerja sebagai mediator.
3. Apabila jalan musyawarah dan mediasi tidak bisa tercapai kesepakatan, maka penyelesaian masalah akan dilakukan melalui jalur hukum.

Demikian perjanjian kerja ini dibuat dengan sungguh-sungguh dalam keadaan sadar dan tanpa ada tekanan atau paksaan dari pihak manapun

Disetujui dan ditandatangani,  
Di :  
Tanggal :  
Oleh :

PIHAK PERTAMA

PIHAK KEDUA

-----

-----

SAKSI I

SAKSI II

-----

-----

Lampiran: Uraian Tugas dari Perjanjian Kerja

Tugas Pekerja Rumah Tangga Kategori Mencuci, Memasak dan Membersihkan Rumah meliputi uraian sebagai berikut:

1. Belanja dan memasak
2. Menyiapkan dan membereskan peralatan makan
3. Mencuci dan menyetrika pakaian
4. Membersihkan rumah: peralatan/perabot rumah tangga, ruangan dan halaman

SAMPLE

## **APPENDIX 7: SAMPLE CONTRACTS – EMPLOYMENT AGREEMENT BETWEEN EMPLOYER AND FOREIGN DOMESTIC WORKER (PHILIPPINES)<sup>472</sup>**

---

<sup>472</sup> Embassy of the Philippines Website, “Downloadable Forms” <<http://www.philippine-embassy.org.sg/forms/>> (accessed 19 September 2018).

**EMBASSY OF THE PHILIPPINES**  
Philippine Overseas Labor Office (POLO)  
Singapore

**BALIK MANGGAGAWA**  
(For Household Service Workers)

**Note:** ELIGIBLE and QUALIFIED to process the Authenticated Employment Contract at the Philippine Embassy: 1. **EMPLOYER** of a worker who already has a valid work permit under his/her name as the employer. 2. **WORKER** who already has a valid work permit. 3. The most recent past **EMPLOYER** of a Filipino Household Worker in the Philippines.

**Requirements for Authenticated Employment Contract:**

1. One (1) original and one (1) copy of Standard Employment Contract - All pages of the contract should be signed by the employer and the worker.
2. One (1) original and one (1) copy of the Undertaking of an Employer
3. Two (2) copies of Work Permit
4. Two (2) copies of Worker's Passport
5. Two (2) copies of Employer's IC
6. The Letter of Guarantee for the *Seven Thousand Singapore Dollars (SGD 7000.00) Philippine Embassy Bond* from a reputable Insurance Company valid for two (2) years from the date of application to the Philippine embassy plus (1) photocopy.

**Administrative Cost:**

**1. HOME LEAVE**

A. Authentication of Contract (Window 6)	\$42.50
B. Verification (Window 1)	\$17.00
C. OWWA (Windows 3 or 4)	\$37.00
D. Overseas Employment Certificate (Window 5)	\$3.00
E. Pag - IBIG (I-Remit Lucky Plaza)	\$5.50
<b>TOTAL:</b>	<b>\$103.00</b>

**2. RENEWAL OF EMPLOYMENT CONTRACT ONLY**

A. Authentication of Contract (Window 6)	\$42.50
B. Verification (Window 1)	\$17.00
C. OWWA (Windows 3 or 4)	\$37.00
<b>TOTAL:</b>	<b>\$96.50</b>

**STANDARD EMPLOYMENT CONTRACT**  
**For Filipino Household Service Workers**

This employment contract is executed and entered in by and between:

A. Employer: \_\_\_\_\_  
Address: \_\_\_\_\_  
Civil Status \_\_\_\_\_ Contact Nos: \_\_\_\_\_  
Passport No/IC No.: \_\_\_\_\_ Date & Place of Issue: \_\_\_\_\_

and the

B. Household Service Worker: \_\_\_\_\_  
Philippine Address: \_\_\_\_\_  
Civil Status: \_\_\_\_\_ Contact Nos: \_\_\_\_\_  
Passport No.: \_\_\_\_\_ Date & Place of Issue: \_\_\_\_\_

Voluntarily binding themselves to the following terms and conditions:

- 1 Site of Employment: SINGAPORE
2. Contract Duration: **TWO (2)** years commencing from the household service worker's departure from the point of origin to the site of employment.
- 3 Basic monthly salary: \_\_\_\_\_ SINGAPORE DOLLARS ( SGDS \_\_\_\_\_ )
4. Work Hours: The household service worker shall be provided with continuous rest of at least 8 hours per day.
- 5 Rest day: At least one (1) rest day per week.
6. Free transportation to the site of employment and back to the point of origin upon expiration of contract or when contract of employment is terminated through no fault of the household service worker and/or due to force majeure. In case of contract renewal, free round-trip economy class air ticket shall be provided by the employer.
- 7 The Employer shall furnish the household service worker, free of charge, separate, suitable and sanitary living quarters as well as adequate food or food allowance
8. Free emergency medical and dental services for the household service worker including facilities and medicine.
- 9 Vacation leave with full pay of not less than 15 calendar days for every year of service to be availed of upon completion of the contract.
10. The employer shall provide the household service worker with personal life accident, medical and repatriation insurance with a reputable insurance company in the host country
11. In the event of death of the household service worker during the term of this contract, his/her remains and personal belongings shall be repatriated to the Philippines at the expense of the Employer. In case the repatriation of remains is not possible, the same may be disposed of upon prior approval of the household service worker's next of kin or by the Philippine Embassy.

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Household Service Worker

12. The employer shall assist the household service worker in remitting a percentage of his/her salary through proper banking channels.
13. Termination:
- a. Termination by Employer: The employer may terminate the household service worker's contract of employment for any of the following just causes: serious misconduct or willful disobedience by the household service worker of the lawful orders of the employer or immediate household members in connection with his/her work; gross habitual neglect by the household service worker of her duties; violation of the laws of the most country. The household worker shall shoulder the repatriation expenses.
  - b. Termination by household service worker: 1) Termination without just cause: the household service worker may terminate the contract without just cause by serving a written notice on the employer at least one month in advance. Without such notice, the worker shall shoulder her/his return transportation. 2) Termination for a just cause: the worker may also terminate the contract without serving any notice on the employer for any of the following just causes: when the worker is maltreated by the Employer or any member of his household; when the employer violates the terms and conditions of this contract; when the employer commits any of the following acts — deliberate nonpayment of salary, physical molestation and physical assault. The Employer shall pay for the repatriation expenses.
  - c. Termination due to illness. Either party may terminate the contract on the grounds of illness, disease or injury suffered by the worker, where the latter's continued employment is prohibited by law or is prejudicial to his/her health as well as to the health of the employer and his household. The repatriation expenses shall be shouldered by the employer.
14. Settlement of Disputes. In case of dispute between the household service worker and the employer, the matter must be referred by either party to the Philippine Embassy who shall endeavor to settle the issue amicably to the best interest of both parties, as appropriate. If the dispute remains unresolved, the Embassy official shall refer the matter to the appropriate Labor authorities of the host country for adjudication without prejudice to whatever legal action the aggrieved party may take against the other.
15. Special Provisions:
- a. The employer shall treat the household service worker in a just and humane manner. In no case shall physical violence be used upon the household service worker.
  - b. The household service worker shall work solely for the Employer and his immediate household. The employer shall in no case require the worker to work in another residence or be assigned in any commercial, industrial or agricultural enterprise.
  - c. The employer shall not deduct any amount from the regular salary or the household service worker other than compulsory contributions prescribed by law. Such legal deductions must be issued a corresponding receipt.
  - d. The employer shall pay for the household service worker's work/residence permit and exit/re-entry visa.
  - e. **It shall be unlawful for the Employer to hold or withhold the Helper's passport with or without his/her consent.**
  - f. The work/residence permit of the household service worker shall remain in her possession.
16. No provisions of this contract shall be altered, amended or substituted without the written approval of the Philippine Embassy or POEA.
17. In the event of war, civil disturbance or major natural calamity, the employer shall repatriate the worker at no cost to the worker.
18. Other terms and conditions of employment shall be governed by the pertinent laws of the Philippines or the host country, any applicable provisions on labor and employment of the host country are hereby incorporated as part of this contract.

In witness thereof, we hereby sign this contract this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_ at Singapore.

\_\_\_\_\_  
Employer

\_\_\_\_\_  
Household Service Worker

**UNDERTAKING OF EMPLOYER FOR THE EMPLOYMENT OF A HOUSEHOLD  
SERVICE WORKER (HSW)**

I, \_\_\_\_\_, with residence and postal address at  
(Name of Employer)

\_\_\_\_\_ in connection with the  
(Address of Employer)

employment of Filipino household service worker (HSW) do hereby undertake the following:

1. That I will shoulder all expenses to be incurred in hiring \_\_\_\_\_  
(Name of HSW)  
including recruitment agency fees, if applicable;
2. That I shall not allow the deduction of any amount from the monthly salary/wages of above-named HSW as placement fee or refund of expenses and agency fees;
3. That upon the arrival of the HSW, I will allow/permit her to attend the Post-Arrival Orientation Seminar (PAOS) being conducted by the Philippine Embassy for newly-arrived workers;
4. That the HSW shall be permitted to communicate with the embassy when needed and have custody of her passport/travel documents at all times.
5. That I shall provide the HSW with separate sleeping quarters and given a rest period of at least eight (8) continuous hours daily;
6. That the HSW shall be given a weekly rest day as provided in the employment contract and as required under MOM regulations;
7. That the HSW shall be made to work in my residence only and shall be treated humanely by me and other persons staying at my house;
8. That the HSW shall be allowed to freely communicate with her family in the Philippines at reasonable time of the day or night;
9. That I shall not make the HSW extend her contract or transfer to another employer without informing the embassy and shall present the person of the HSW to the embassy when so required;
10. That I shall first notify the Philippine Embassy and/or the Singapore Employment Agency of my intention to cancel the work permit of my HSW;
11. That I shall notify the Philippine Embassy and/or the Singapore Employment Agency of any significant developments about the condition and employment of the HSW including her repatriation;
12. That I shall explain to the members of my household the foregoing undertaking and ensure that the undertakings are observed by them; and
13. That I shall assist the HSW in availing of benefits provided under the laws of SINGAPORE.

It is my understanding that if any or all of the above undertakings are violated or not complied with, I will be blacklisted and banned from hiring household service workers from the Philippines.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Signature of Employer

## **APPENDIX 8: SAMPLE CONTRACTS – SERVICE AGREEMENT BETWEEN EMPLOYMENT AGENCY AND EMPLOYER (SINGAPORE)<sup>473</sup>**

---

<sup>473</sup> MOM Website, “What must be included in an employment agency’s (EA) service agreement with a foreign domestic worker’s (FDW) employer?” <<https://www.mom.gov.sg/faq/employment-agencies/what-must-be-included-in-an-eas-service-agreement-with-an-fdw-employer>> (accessed 19 September 2018).

**SERVICE AGREEMENT  
BETWEEN FOREIGN DOMESTIC WORKER EMPLOYER AND EMPLOYMENT AGENCY**

Employment Agency Ref No. : \_\_\_\_\_

Parties to this agreement are to retain a signed copy of this agreement.

---

This Service Agreement is dated \_\_\_\_\_ (dd/mm/yyyy) and made between:

- (A) Full Name of Employment Agency (“Agency”) : \_\_\_\_\_  
Employment Agency License Number : \_\_\_\_\_  
Registered Business Address : \_\_\_\_\_  
\_\_\_\_\_
- (B) Full Name of Employer (“Employer”) : \_\_\_\_\_  
NRIC/Passport Number : \_\_\_\_\_  
Address : \_\_\_\_\_  
\_\_\_\_\_

**\* Delete where appropriate in the contract.**

It is hereby agreed between the parties that:

**1. Appointment of Services**

- 1.1 The Employer hereby appoints the Agency to secure the services of a Foreign Domestic Worker (FDW) (set out in the *Services & Fees Schedule*) for a contract of service on the terms and conditions that appear below.
- 1.2 The period of this Service Agreement shall be from the date of signing this Service Agreement for a period of \_\_\_\_\_ or the validity of the work permit whichever is shorter, and subject to the clauses 3-5 on Replacement and Refund.
- 1.3 The Agency shall handover the FDW to the employer within \_\_\_\_\_ \*day(s) / month(s) after obtaining the “Letter of Notification to bring FDW into Singapore” by Ministry of Manpower, subject to the conditions under Clause 3.1, Table 1. The Agency and Employer shall check against the “Handing and Taking-Over Form” during the handing/taking-over process. [\*To delete accordingly]

**2. Fees Payment**

- 2.1 In consideration of the services to be provided by the agency, the Employer shall pay the following fees as set out in the *Services & Fees Schedule*:
- i. Service Fee Charged on Employer

Total Service Fee of S\$\_\_\_\_\_ shall be paid to the Agency for the services rendered in the following manner:

- a. A deposit of S\$\_\_\_\_\_ (if any), shall be paid in full before the Agency submits the Employer's application to the Ministry of Manpower (MOM).
- b. The balance of S\$\_\_\_\_\_ when the FDW reports for work/ duty.

ii. Placement Fee

- a. The placement fee of S\$\_\_\_\_\_ comprises (1) service fee charged on the FDW by the Agency and (2) personal loan incurred by FDW overseas.
  - (1) Service fee charged on the FDW by the Agency<sup>1</sup> amounting to \$\_\_\_\_\_
  - (2) Personal loan incurred by FDW overseas amounting to \$\_\_\_\_\_
- b. The Employer **\*agrees / does not agree** to pay the placement fee of \$\_\_\_\_\_ on behalf of the FDW which the Employer may recover from the FDW as determined in the employment contract. [\*To delete accordingly]

2.2 Apart from the Service Fee, the Agency confirms that there are no hidden or other costs or expenses that the Employer shall be liable for except those, if any, under this Agreement.

2.3 All payments shall **\*include / exclude** the prevailing Goods and Services Tax (GST). [\*To delete accordingly]

3. **Replacement of FDW before FDW is placed to employer**

3.1 If the FDW is unable to be placed to the Employer, the Agency **\*shall / shall not** provide the Employer with a replacement FDW at no additional cost and which shall not count towards the Employer's entitlement in clause 4.1 [\*To delete accordingly]

3.2 The Agency may not provide the Employer with a replacement FDW at no additional cost under the following circumstances [\*Agency to list circumstances]:

---

---

---

---

---

3.3 In the event that the FDW needs to be repatriated before she is placed to the Employer, the Agency shall be responsible for and bear the cost of repatriation of the FDW to the international port of entry that affords her reasonable access to her hometown within her home country.<sup>2</sup>

<sup>1</sup> Fees should not exceed 1 month's salary for each year of the period of validity of the FDW's work permit, subject to a maximum of 2 months' salary of the FDW.

<sup>2</sup> Under the EA licence conditions, the licensee is required to bear the cost of repatriation of any non-citizen brought into Singapore by the licensee if the Work Permit is not issued, or if the non-citizen is not placed on employment, or if the Work Permit is revoked in situations explained under clause 3.2

- 3.4 In the event that the Employer opts not to have a replacement FDW in the circumstances stated in clause 3.1 when the FDW(s) who matches the Employer's selection criteria is available, the Employer **\*shall / shall not** be entitled to a refund of \$ \_\_\_\_\_. [\*To delete accordingly]
- 3.5 After a replacement has been accepted by the Employer, the Employer **\*shall / shall not** be entitled to any refund of the service fee for the replacement FDW as set out in the *Services and Fees Schedule- Form B* (if any) has been paid. [\*To delete accordingly]
4. **Replacement of FDW after FDW is handed over to employer**
- 4.1 According to the *Services & Fees Schedule*, the Employer is entitled to \_\_\_\_\_ (e.g. one) FDW replacement(s) from the Agency within a period of \_\_\_\_\_ month(s) ('replacement period') over and above the Employer's entitlement as stated in clause 3.1. A new fees schedule for replacement (Form B) contained within this Agreement shall be signed. However, the Employer may request for a replacement only after the FDW has worked for the Employer for a minimum of \_\_\_\_\_ days (which should be before the expiry of the replacement period). This replacement period shall be applicable to all subsequent replacements, if the Employer is entitled to more than 1 replacement. The grant of replacement is subject to the following:
- 4.1.1 The Employer must sign the Consent to Transfer Form from the Work Pass Division, Ministry of Manpower ('MOM') to allow the FDW to seek employment with the new Employer.
- 4.1.2 The Employer shall agree to transfer the FDW to a new employer specified by the Agency and will not in any way prevent or jeopardize the FDW's transfer or opportunity to seek re-employment with the new employer, unless the FDW is medically unfit to work as a domestic worker or has committed a criminal offence in Singapore. The Employer must make the FDW available to the Agency for \_\_\_\_\_ days (recommended to be not exceeding 21 days) for her to be interviewed and successfully transferred. If the Agency is unable to transfer the FDW within \_\_\_\_\_ days, the Agency shall update the Employer on the FDW's transfer status. Beyond this period, the Employer may repatriate the FDW and cancel her Work Permit.
- 4.1.3 If the Employer decides to terminate the services of the FDW, the Employer shall inform the Agency for settlement of any outstanding issues between the FDW and Agency.
- 4.1.4 The replacement FDW shall be of the same selection criteria as the previous FDW unless both parties explicitly agree to the contrary. In the event that an Employer selects a replacement FDW of a different selection criteria, the Employer shall have to pay the difference in the prescribed package and replacement fee, if applicable.
- 4.1.5 The replacement shall take effect within \_\_\_\_\_ month(s). After which time, if the Agency fails to provide a replacement, the Employer may choose to terminate this Agreement, subject to the clauses under Section 5 on Refund Policy.
- 4.2 The Employer reserves the right to reject the intended replacement and terminate this Agreement if the replacement does not fulfill Employer's selection criteria (based on the original selection criteria). In such case, the Employer **\*shall / shall not** be entitled to a refund of the Service Fee charged on him as stipulated in Clause 2.1(i) and \_\_\_\_\_ % of placement fee paid to the Agency. [\*To delete accordingly]

5. **Refund Policy for Service Fee and Placement Fee**

5.1 If FDW has not been placed to Employer

5.1.1 The Agency agrees to place the FDW to the Employer within \_\_\_\_\_ **\*days / month** of the date of this contract, failing which the Employer is entitled to a \_\_\_\_\_% refund of the service fee and \_\_\_\_\_% of placement fee paid to the Agency. [\*To delete accordingly]

5.1.2 If the Employer terminates the agreement in writing with the Agency, the Employer shall be entitled to a refund of the Service Fee (if any) *less* the administrative charge (as stipulated in table below) from the Agency within \_\_\_\_\_ **\*week(s) / month(s)** as listed below [\*To delete accordingly]:

	<b>Event</b>	<b>Administrative Charge</b>
i	<i>Before</i> the submission of the Work Permit application to MOM.	
ii	<i>After</i> the submission of the Work Permit application to MOM.	
iii	<i>If</i> the FDW Work Permit application is rejected by MOM due to no fault of the Agency	
iv	<i>After</i> the Letter of Notification by MOM but <i>before</i> FDW arrives Singapore	
v	<i>After</i> the Letter of Notification by MOM and <i>after</i> FDW arrives Singapore	
vi	<i>After</i> the Letter of Notification, by MOM, relating to FDW on transfer	

5.2 If FDW has been placed with Employer and if FDW can be transferred

5.2.1 The Agency shall refund the following amounts to the Employer as stated in the table below, should the Employer decide to terminate the FDW prematurely and the FDW is successfully transferred to another employer. This is subject to the Employer returning the FDW to the Agency and agreeing to the FDW's transfer to a new employer specified by the Agency without in any way preventing or jeopardizing the FDW's transfer or opportunity to seek re-employment with a new employer.

<b>S/N</b>	<b>Description</b>	<b>% of service fee charged to the Employer</b>	<b>% of outstanding placement fee paid by the Employer (if applicable)</b>
i	FDW is successfully transferred to another Employer*		

5.2.2 The refund shall be effected within \_\_\_\_\_ week(s) (not exceeding 4 weeks) from the date of termination of the FDW or the date the FDW was transferred, whichever is later.

5.3 If FDW has been placed with Employer and if FDW cannot be transferred

5.3.1 Under the following circumstances, the Agency shall refund the following amounts to the Employer as stated in the table below:

S/N	Description	% of service fee charged to the Employer	% of outstanding placement fee paid by the Employer (if applicable)
i	FDW is unwilling and/or unable to continue employment in Singapore within the waiting period stipulated in clause 4.1.2		
ii	FDW has been assigned to another Agency by MOM		
iii	FDW goes to another agency (not assigned by MOM)		

5.3.2 The refund shall be effected within \_\_\_\_\_ week(s) (not exceeding 4 weeks) from the end of the waiting period stipulated in clause 4.1.2/the date the FDW is assigned to another agency by MOM/the date the Agency is informed that the FDW selects another agency, whichever is applicable.

5.3.3 If the FDW has been assigned to another Agency by MOM or other relevant authorities, the Employer shall bear all the costs incurred, including medical expenses, food and accommodation costs for the duration of the relevant authorities' investigation in any event and regardless of the outcome.

6. **Special Provisions**

6.1 The Agency should exercise due diligence in ensuring the accuracy of all personal information given in the bio-data of the FDW, within the agency's reasonable control to check and verify.

6.2 The Agency shall ensure that the FDW arrives on time as scheduled, but should there be any delay not caused by the Agency, the Agency will not be liable for any claims made by the Employer for consequential loss or delay.

6.3 The Employer shall permit the Agency or such authorised persons as the Agency may appoint to visit the work location to determine the welfare of the FDW and to observe and adjudge the performance of her obligations to the Employer or Agency.

6.4 If the Employer requests for the Agency to provide food and accommodation, and should the Agency agree to do so, the Employer shall pay \$\_\_\_\_\_ per day to the Agency for provision of this service. These costs cannot be recovered from the FDW.

- 6.5 Should the Agency agree to provide food and accommodation for the FDW as stated in clause 6.4, the Employer shall remain legally responsible for the FDW. This includes but is not limited to bearing the costs of the FDW's medical expenses. Prior to providing food and accommodation for the FDW, the Agency shall inform the Employer that the Employer is legally responsible for the FDW.
- 6.6 If the Agency provides counseling services, the Employer shall be liable to pay the Agency a sum of S\$\_\_\_\_\_ for each counseling session at the **\*Agency's premises / Employer's residence**. However, this sum is not payable if the Employer was already charged for counseling services under the service fee as set out in the *Services & Fees Schedule*. [\*To delete accordingly]
- 6.7 The Employer shall inform the Agency of the termination of the FDW's employment with the same period of notice given to the FDW for termination of employment.
- 6.8 The Agency shall furnish the Employer with the employment history of the FDW. The Agency shall obtain such information from the Ministry of Manpower and ensure that the most updated information is made available to the Employer during the selection process.
- 6.9 In the event that the FDW absconds, the Agency **\*shall / shall not** assist to contact the NGOs and the Embassy of her home country to locate her. [\*To delete accordingly]

7. **Force Majeure**

In the event that any party shall be rendered unable to carry out the whole or any part of its obligations under this Agreement for any reason beyond the control of that party, including but not limited to acts of God, force majeure, strikes, war, riot and any other causes of such nature, then the performance of the obligations hereunder of that party or all the parties as the case may be and as they are affected by such cause shall be excused during the continuance of any inability so caused, but such inability shall as far as possible be remedied with all reasonable dispatch.

8. **Confidentiality**

The Agency shall not, unless with the Employer's written consent, directly or indirectly give, divulge or reveal to any persons any information whatsoever regarding the Employer, which information the Agency acquired or requested the Employer to provide pursuant to this Agreement. This condition shall not apply in the case where the information is required for the purpose of any investigations under any law, by the police, the Controller of Work Passes, the Commissioner for Employment Agencies, Commissioner for Labour, Immigration officers or any other public officer.

9. **Dispute Resolution**

- 9.1 If the Agency is unable to resolve any grievance(s) of the Employer or if the parties are unable to resolve any dispute between them with respect to this Agreement, the parties shall refer the

grievance(s) or dispute to \_\_\_\_\_  
\_\_\_\_\_ (insert independent third party mediator<sup>3</sup>).

- 9.2 If the dispute arising from this Agreement cannot be settled by the above mediation stated in clause 9.1, the parties shall refer the grievance(s) or dispute to \_\_\_\_\_  
\_\_\_\_\_ (insert alternative third party mediator<sup>3</sup>).

10. **Precedence to Other Agreements**

In the event of there being any inconsistency between the terms of this Agreement and the terms of any other agreement (oral or written) entered into between the Agency and the Employer, the terms of this Agreement shall prevail and the terms of such other agreement shall be deemed to be amended to the extent necessary for it to be read as being consistent with this Agreement.

11. **Severability of Provisions**

If any provision of this Agreement or part thereof is rendered void, illegal or unenforceable by any legislation to which it is subject, it shall be rendered void, illegal or unenforceable to that extent and it shall in no way affect or prejudice the enforceability of the remainder of such provision or the other provisions of this Agreement.

12. **Third Party Rights**

A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act, Chapter 53B of Singapore or any other laws in any jurisdiction to enforce any term of this Agreement.

13. **Termination of Agreement**

Any party intending to terminate this agreement shall provide at least \_\_\_ day(s) prior notice to the other party.

14. **Miscellaneous**

- 14.1 The Employer shall observe and comply with all laws in force in Singapore affecting this Agreement, including but not limited to the Employment of Foreign Manpower Act, the Employment of Foreign Manpower (Work Passes) Regulations 2007, the Immigration Act, and the Immigration Regulations. The Employer shall give all notices and pay all fees required to be given or paid under any law in force in Singapore.

- 14.2 It is the \*Employer's/Agency's responsibility to receive or send the FDW from/to the premises of the Agency for reasons pertaining to deployment, re-deployment (FDW seeking new employer) or counseling [\*To delete accordingly].

<sup>3</sup> The third party mediator can be a provider of mediation services. Otherwise, the third party mediator must be aware and agreeable to the arrangement.

**IMPORTANT NOTES:**

- i) The FDW is deemed to be the responsibility of the employer at all times from the date of handing over from the agent until such time as the work permit is cancelled and the FDW is repatriated, or until a transfer is approved by the Ministry of Manpower and the FDW is handed over to the new employer.
- ii) The Employer must continue to pay all levies imposed by the relevant authorities until a transfer is approved or the work permit is cancelled.

IN WITNESS whereof this Agreement has been entered into the day and year first above written, the contracting parties having read and understood the terms and conditions of this contract hereunto set their signatures below.

\_\_\_\_\_  
**Signature of Employer/Client**

**Name:** \_\_\_\_\_

**NRIC or Passport No:** \_\_\_\_\_

**Date:** \_\_\_\_\_

\_\_\_\_\_  
**Signed for and on behalf of Agency**

**XYZ Employment Agency**

**Date:** \_\_\_\_\_

<b>PART A: Particulars of FDW Selected</b>	
Name of FDW Selected:	<input style="width: 100%;" type="text"/>
Nationality:	<input style="width: 100%;" type="text"/>
Passport No:	<input style="width: 100%;" type="text"/>
Salary:	<input style="width: 100%;" type="text"/>
Date: <input style="width: 100px;" type="text"/>	
<b>PART B1: Service Fee</b>	
1 Service fee	SS <input style="width: 100px;" type="text"/>
<b>PART B2: Administrative costs</b>	
2 Documentation and Application / Collection of Work Permit	<input style="width: 100px;" type="text"/>
3 Medical Examination Fee (for the issuance of work permit)	<input style="width: 100px;" type="text"/>
4 Premium for the Security Bond and the Personal Accident Insurance	<input style="width: 100px;" type="text"/>
5 Reimbursement of Indemnity Policy	<input style="width: 100px;" type="text"/>
6 Home Service	<input style="width: 100px;" type="text"/>
7 Counseling Services at *Agency's premise / Employer's residence (One-time payment) [* To delete accordingly]	<input style="width: 100px;" type="text"/>
8 English Entry Test	<input style="width: 100px;" type="text"/>
9 Safety Awareness Course	<input style="width: 100px;" type="text"/>
10 Cost for Replacement within the Maximum Replacement Period of _____ *months/years	<input style="width: 100px;" type="text"/>
- _____ replacement within _____ months \$ _____	
- _____ replacement within _____ months \$ _____	
- _____ replacement within _____ months \$ _____	
11 Other Services Provided (where applicable) :	
a _____	<input style="width: 100px;" type="text"/>
b _____	<input style="width: 100px;" type="text"/>
c _____	<input style="width: 100px;" type="text"/>
d _____	<input style="width: 100px;" type="text"/>
e _____	<input style="width: 100px;" type="text"/>
<b>Total Fees:</b>	
<b>Renewal of Work Permit</b>	
1 _____	<input style="width: 100px;" type="text"/>
2 _____	<input style="width: 100px;" type="text"/>
<b>Package Fee:</b>	
Payment of <i>Service Fee</i> as agreed in this schedule shall be made as follows:	
1 Deposit - On confirmation of FDW through Bio data/ Others (please specify: _____)	
2 Final Payment - When the FDW reports for work/ Others (please specify: _____)	
<b>PART C: Placement Fee</b>	
1 Service fee charged on the FDW by the Agency (subject to fee cap)	<input style="width: 100px;" type="text"/>
Breakdown of service fee:	
_____	<input style="width: 100px;" type="text"/>
_____	<input style="width: 100px;" type="text"/>
_____	<input style="width: 100px;" type="text"/>
2 Personal loan incurred by FDW overseas	<input style="width: 100px;" type="text"/>
<b>Total Placement fee:</b>	
Payment of <i>Placement Fee</i> as agreed in this schedule shall be made as follows: (tick where applicable)	
<input type="checkbox"/> _____ post-dated cheques of SS _____ each	
<input type="checkbox"/> _____ post-dated cheques of SS _____ each	
<input type="checkbox"/> _____ post-dated cheques of SS _____ each	
<input type="checkbox"/> Full sum payable upon *handover / signing of contract / others (please specify) : _____	
<input type="checkbox"/> Others (please specify): _____	

\_\_\_\_\_  
 Signature by Employer

\_\_\_\_\_  
 Signed for and on behalf of  
 XYZ Employment Agency



# ABC Employment Agency

Licence No: xxxxxxxx

## HANDING & TAKE OVER FORM

<p><b>Information</b></p> <p>Reference No: _____</p> <p>Employer's Name: _____</p> <p>Address: _____</p> <p>_____</p> <p>FDW's Name: _____</p> <p>Passport No: _____</p>	<table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left; width: 70%;">Facilitation</th> <th style="text-align: left; width: 30%;">Date</th> </tr> <tr> <td>• Application of WP</td> <td>_____</td> </tr> <tr> <td>• Approval of WP</td> <td>_____</td> </tr> <tr> <td>• Submission of BG/INS</td> <td>_____</td> </tr> <tr> <td>• ETA of FDW</td> <td>_____</td> </tr> <tr> <td>• Medical Check-up</td> <td>_____</td> </tr> <tr> <td>• Thumb printing</td> <td>_____</td> </tr> <tr> <td>• Collection of Documents</td> <td>_____</td> </tr> </table>	Facilitation	Date	• Application of WP	_____	• Approval of WP	_____	• Submission of BG/INS	_____	• ETA of FDW	_____	• Medical Check-up	_____	• Thumb printing	_____	• Collection of Documents	_____								
Facilitation	Date																								
• Application of WP	_____																								
• Approval of WP	_____																								
• Submission of BG/INS	_____																								
• ETA of FDW	_____																								
• Medical Check-up	_____																								
• Thumb printing	_____																								
• Collection of Documents	_____																								
<b>Documents to be handed to FDW personally</b>	<b>Handing over of FDW and Documents to Employer</b>																								
<table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left; width: 60%;">Description</th> <th style="text-align: left; width: 40%;">Date/ Signature of FDW</th> </tr> <tr> <td>• Employment Contract</td> <td>_____</td> </tr> <tr> <td>• FDW's Passport</td> <td>_____</td> </tr> <tr> <td>• Work Permit</td> <td>_____</td> </tr> <tr> <td>• FDW Handy Guidebook from MOM</td> <td>_____</td> </tr> <tr> <td>• Medical report</td> <td>_____</td> </tr> </table>	Description	Date/ Signature of FDW	• Employment Contract	_____	• FDW's Passport	_____	• Work Permit	_____	• FDW Handy Guidebook from MOM	_____	• Medical report	_____	<table style="width: 100%; border-collapse: collapse;"> <tr> <th style="text-align: left; width: 60%;">Description</th> <th style="text-align: left; width: 40%;">Date/Signature</th> </tr> <tr> <td>• Service Contract</td> <td>_____</td> </tr> <tr> <td>• Employment Contract</td> <td>_____</td> </tr> <tr> <td>• B/Guarantee</td> <td>_____</td> </tr> <tr> <td>• Insurance</td> <td>_____</td> </tr> <tr> <td>• Medical Report</td> <td>_____</td> </tr> </table>	Description	Date/Signature	• Service Contract	_____	• Employment Contract	_____	• B/Guarantee	_____	• Insurance	_____	• Medical Report	_____
Description	Date/ Signature of FDW																								
• Employment Contract	_____																								
• FDW's Passport	_____																								
• Work Permit	_____																								
• FDW Handy Guidebook from MOM	_____																								
• Medical report	_____																								
Description	Date/Signature																								
• Service Contract	_____																								
• Employment Contract	_____																								
• B/Guarantee	_____																								
• Insurance	_____																								
• Medical Report	_____																								
<p>I, _____, NRIC/Passport No: _____</p> <p>hereby confirm that _____ (Name of FDW),</p> <p>Passport No: _____ is the FDW selected by me and I take custody</p> <p>and responsibility of the FDW with effect from _____.</p> <p>_____</p> <p>Signature/ Name of Employer / Date</p>																									

**APPENDIX 9: SAMPLE CONTRACTS – SAFETY AGREEMENT BETWEEN  
EMPLOYER AND FOREIGN DOMESTIC WORKER (SINGAPORE)<sup>474</sup>**

---

<sup>474</sup> MOM Website, "Forms" <<https://www.mom.gov.sg/forms>> (accessed 19 September 2018).



EA Name

**Instructions:**Employer to fill  
in Part AFDW to fill in  
Part CEA to explain,  
and to fill in  
Part B & D**SAFETY AGREEMENT BETWEEN FOREIGN DOMESTIC WORKER AND EMPLOYER**

This agreement is made between (a) The Employer and (b) The Foreign Domestic Worker (FDW) and facilitated by (c) The Employment Agency (EA) to accord with the Ministry of Manpower's regulations on conditions for window cleaning.

[Refer to Annex A on excerpt from the Employment of Foreign Manpower (Work Passes) Regulations ("the Condition")]

Employers of FDWs shall not permit their FDWs to clean the window exterior except where two conditions are met:

- a. **Window grilles have been installed and are locked at all times during the cleaning process; and**
- b. **The employer or an adult representative of the employer is physically present to supervise the FDW.**

The rules will apply to all homes, except for windows that are at the ground level or along common corridors.

**Part A – Employer**

Employer Name		
NRIC No. / FIN		
Contact No.		
Residential Address		
Residential Dwelling Type	<input type="checkbox"/> HDB Apartment <input type="checkbox"/> Private Apartment/Condominium <input type="checkbox"/> Landed Property	
<b>Do I require my FDW to clean window exterior?</b>		
	<input type="checkbox"/> Yes	<input type="checkbox"/> No
(i) Location of window exterior	<input type="checkbox"/> On ground floor <input type="checkbox"/> Facing common corridor <input type="checkbox"/> Others If "Others" is selected, proceed to (ii)	
(ii) Grilles installed on windows required to be cleaned by FDW	<input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes" is selected, proceed to (iii)	
(iii) Adult supervision when cleaning window exterior	<input type="checkbox"/> Yes <input type="checkbox"/> No	

**Continuation of Part A – Employer**

I have received the advisory letter and trainer's assessment checklist from the Settling-In-Programme (for employers of first-time FDWs)

[The Employer is required to choose only **one** of the following options]

- I understand the Conditions and I will not require my FDW to clean the window exterior of my home.
- I understand the Conditions and I require my FDW to clean only the window exterior on the ground floor of my home.
- I understand the Conditions and I require my FDW to clean only the window exterior along the common corridor of my home.
- I require my FDW to clean the window exterior of my home, and I shall ensure that the grilles are locked when cleaning the window exterior and cleaned only when supervised by myself or my adult representative.

Signature / Date

*Employer is to ensure that Part A is duly completed before the agreement is signed and dated. Do not pre-sign the agreement or sign on incomplete form.*

**Part B – Employment Agency**

Name

Registration No.

I have explained the Conditions to the Employer and advised the Employer that he \* **can / cannot** require the FDW to clean the window exterior of his home based on the information presented in Part A [\* to delete accordingly]

Signature / Date

**Part C – Foreign Domestic Worker**

Name

WP No.

I shall abide by my Employer's instructions to clean the window exterior safely in compliance with the Condition

[The FDW is required to choose only **one** of the following options.]  
As indicated by the Employer above:-

- I understand that I am not required to clean the window exterior of my employer's home.
- I understand that I am required to clean only the window exterior on the ground floor of my employer's home.
- I understand that I am required to clean only the window exterior along the common corridor of my employer's home.
- I understand that I am required to clean the window exterior of my employer's home, and I shall ensure that I clean the window exterior only when the grilles are locked and only when supervised by my employer or his adult representative.

**Continuation of Part C – Foreign Domestic Worker**

**[In native language]** [The FDW is required to choose only **one** of the following options.]

As indicated by the Employer above:-

- I understand that I am not required to clean the window exterior of my employer's home.
- I understand that I am required to clean only the window exterior on the ground floor of my employer's home.
- I understand that I am required to clean only the window exterior along the common corridor of my employer's home.
- I understand that I am required to clean the window exterior of my employer's home, and I shall ensure that I clean the window exterior only when the grilles are locked and only when supervised by my employer or his adult representative.

Signature / Date

**Part D – Employment Agency**

I have explained the Conditions to the FDW and advised the FDW that she **\* can / cannot** clean the window exterior of the residential address based on the employer's declaration in Part A [\* to delete accordingly]

Signature / Date

**Annex A****Condition 2, Part I of the Fourth Schedule of the Employment of Foreign Manpower (Work Passes) Regulations**

The employer shall provide safe working conditions and take such measures as are necessary to ensure the safety and health of the foreign employee at work. This includes -

- a) not permitting the foreign employee to clean the outward facing side of any window not located on the ground level or not facing a common corridor if the window is not fitted with a grille securing against any adult extending any part of his body beyond the window ledge except his arms; and
- b) in the case of a window referred to in sub-paragraph (a) fitted with a grille of the description specified in that sub-paragraph, not permitting the foreign employee to clean the outward facing side of the window unless at all times during the cleaning process –
  - i. the grille is locked or secured in a manner that prevents the grille from being opened;
  - ii. the foreign employee remains inside the room;
  - iii. no part of the foreign employee's body extends beyond the window ledge except the arms; and
  - iv. the foreign employee is supervised by the employer, or an adult representative of the employer, who is reasonably capable of conducting such supervision and is aware of the requirements in sub-paragraphs (i), (ii) and (iii).

**APPENDIX 10: SAMPLE TEMPLATE FOR PDPA REQUEST**

Dear Sirs,

**REQUEST TO ACCESS PERSONAL DATA**

1. We are engaged by [insert name] to make a request on her behalf for access to her personal data that is in the possession or under the control of your organisation.
2. Pursuant to Section 21(1) of the Personal Data Protect Act, [insert name] seeks access to all of her personal data, including but not limited to the following:
  - a. the terms under which she was engaged by your organisation or its affiliate, vendor or other agent in [home country], including all fees that were charged to her by your organisation or its affiliate, vendor or agent in [home country].
  - b. the terms under which she was engaged by [Mrs/Mr name].
  - c. her entry into Singapore on a Work Permit, including the In-Principal Approval provided by the Ministry of Manpower and her entrance medical examination.
  - d. [add any specific documents]
3. We respectfully request that you let us have the above as soon as reasonably possible.
4. Please do not hesitate to contact the undersigned should you require further clarifications.

Yours Faithfully,

---

Name:

Date:

## **APPENDIX 11: CHECKLIST FOR EVIDENCE COLLECTION**

# EVIDENCE COLLECTION 101

What happened?	Cause of action	What evidence to get? (From most to least urgent)
<p><b>I was not paid enough money for my work</b></p> <ul style="list-style-type: none"> <li>• What is your monthly salary?</li> <li>• How much was not paid?</li> </ul>	<ul style="list-style-type: none"> <li>• Contractual action for debt</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Log or Journals</li> <li><input type="checkbox"/> Text, Whatsapp or Facebook messages</li> <li><input type="checkbox"/> Recording of conversations</li> <li><input type="checkbox"/> Written agreement between worker and employer or employment agent</li> <li><input type="checkbox"/> Salary slip or receipt</li> <li><input type="checkbox"/> Employment contract or IPA</li> <li><input type="checkbox"/> Bank statements</li> </ul>
<p><b>Agency or employer deducted salary illegally</b></p> <ul style="list-style-type: none"> <li>• How much was deducted?</li> <li>• Maximum: 2 month salary</li> </ul>	<ul style="list-style-type: none"> <li>• Restitution</li> </ul>	
<p><b>I was made to work in places other than my employer's home</b></p> <ul style="list-style-type: none"> <li>• Where did you work?</li> <li>• What work did you do?</li> </ul>	<ul style="list-style-type: none"> <li>• Contractual action for debt</li> <li>• Restitution</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Log or Journals</li> <li><input type="checkbox"/> Text, Whatsapp or Facebook messages</li> <li><input type="checkbox"/> Photographs</li> <li><input type="checkbox"/> Audio or video recording (including CCTV footage)</li> <li><input type="checkbox"/> Written agreement between worker and employer</li> </ul>
<p><b>I got injured at work by accident</b></p> <ul style="list-style-type: none"> <li>• What happened to you?</li> <li>• What harm did you suffer?</li> </ul>	<ul style="list-style-type: none"> <li>• Negligence</li> <li>• Non-delegable duty</li> <li>• Breach of statutory duty</li> </ul>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Log or Journals</li> <li><input type="checkbox"/> Text, Whatsapp or Facebook messages</li> <li><input type="checkbox"/> Photographs</li> <li><input type="checkbox"/> Audio or video recording (including CCTV footage)</li> <li><input type="checkbox"/> Police reports</li> <li><input type="checkbox"/> Medical and mental health records</li> </ul>
<p><b>I was harassed, abused, and/or forced to quit</b></p> <ul style="list-style-type: none"> <li>• What happened to you?</li> <li>• What harm did you suffer?</li> </ul>	<ul style="list-style-type: none"> <li>• Battery, assault, false imprisonment</li> <li>• Protection from Harassment Act (POHA)</li> <li>• Defamation and malicious falsehood</li> </ul>	
<p><b>REMEMBER!!! When in doubt, take a picture of it and share it with a trusted friend! Or call JWB! 6871 8757</b></p>		
<p><b>MOST IMPORTANTLY:</b></p>		
<p><b>Collect client contact details</b></p> <ul style="list-style-type: none"> <li>• Client's contact details</li> <li>• Client's friend, family member or husband's contact details</li> </ul>		<p><b>Using evidence:</b></p> <ul style="list-style-type: none"> <li>• Evidence need not be 100% perfect</li> <li>• Keep evidence safely</li> </ul>
<p><b>Collect name and identifying details of employer / employment agents</b></p> <ul style="list-style-type: none"> <li>• Employment contract or IPA</li> </ul>		

# Justice Without Borders

*Because the right to just compensation shouldn't end  
even when a victim returns home*

## **Singapore Office**

16 Kallang Place  
#07-01/02/03  
Singapore 339156  
Tel: +65 6871-8757

## **Hong Kong Office**

Garage Collective, Shop 4-7  
158A Connaught Road W  
Sai Ying Pun  
Hong Kong

## **Indonesia Office**

CODE Margonda  
Depok Town Square Mall  
Lt. 2  
Jl Margonda Raya, Depok

## **US Office**

4615 Sedgwick Street NW  
Washington DC 20016,  
USA

✉ [info@forjusticewithoutborders.org](mailto:info@forjusticewithoutborders.org)

🌐 [www.forjusticewithoutborders.org](http://www.forjusticewithoutborders.org)

**f** [forjusticewithoutborders](https://www.facebook.com/forjusticewithoutborders)

🐦 [4\\_jwb](https://twitter.com/4_jwb)

**in** <https://www.linkedin.com/company/justice-without-borders>