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WongPartnership LLP is a market leader in Singapore known for the provision of high-quality legal services that extend beyond the shores of Singapore, with a particular focus on the Association of Southeast Asian Nations, China and the Middle East. WongPartnership has over 300 lawyers, with offices in Beijing, Shanghai and Yangon, as well as in Abu Dhabi, Dubai, Jakarta, Kuala Lumpur and Manila through member firms of WPG, a regional law network. The employment practice is cross-disciplinary in nature and the team encompasses lawyers well versed in corporate practice as well as disputes work. It draws on the best of both worlds in providing practical solutions for clients in all aspects of employment law. The practice implements staff procedures and manuals, manages retrenchment exercises, represents clients in court and assists in investigations involving employee misconduct. It regularly advises on implications arising from the relocation of employees and termination of employment for both employers and employees.

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1. Terms of Employment

1.1 Status of Employee

The main legislation governing employment in Singapore is the Employment Act (Cap. 91, 2009 Rev. Ed.) ("Employment Act").

Prior to 1 April 2019, the Employment Act did not apply to all executives and managers. Since 1 April 2019, the scope of the Employment Act has been extended to apply to all persons, regardless of whether the persons are employed in an executive or managerial position or otherwise (although there are some limited exceptions), who have entered into or work under a contract of service with an employer.

For completeness, the current classes of employees excluded from the ambit of the Employment Act are seafarers, domestic workers and persons who have been gazetted as not being employees for the purposes of the Employment Act.

The Employment Act divides employees into two sub-categories, namely a workman and non-workman. A workman refers (among others) to an employee engaged in manual labour and drivers and maintenance workers of vehicles used for the transport of passengers for hire or for commercial purposes.

Workmen earning a monthly salary not exceeding SGD4,500 as well as non-workmen earning a monthly salary not exceeding SGD2,600 ("Part IV Employees") enjoy special protection under Part IV of the Employment Act. Specifically, Part IV of the Employment Act sets out particular provisions regulating work on rest days, hours of work and other conditions of service.

1.2 Contractual Relationship

Employment contracts can be for an indefinite period or for a fixed term. As the Employment Act provides that all employment contracts can be terminated with notice, even fixed-term contracts would be terminable with notice. If the contract is silent as to the notice period, the Employment Act prescribes a default notice period. More details of this are in **6.2 Notice Periods/Severance**.

Employment contracts can also be on a full-time or part-time basis. A part-time employee is one who works less than 35 hours a week. Part-time employees will also be covered by the Employment Act.

Employment contracts are technically not required to be in writing. That said, written contracts are common and encouraged so that both parties are aware of the specific terms of the employment.

On a related note, please note that there is a legal requirement that key employment terms (KET) be in writing. Please see **1.5 Other Terms of Employment** for further details relating to the KET.

In addition, for part-time contracts, the Employment (Part-Time Employees) Regulations require that every contract of service specifies:

- hourly basic rate of pay;
- number of working hours per day or per week;
- number of working days per week; and
- hourly gross rate of pay, with the description and amount of each allowance payable separately itemised.

1.3 Working Hours

As a preliminary point, only the working hours of Part IV Employees (see **1.1 Status of Employee**) are regulated in the Employment Act. This relates to both full-time and part-time contracts. For non-Part IV Employees, the working hours are subject to contract.

Generally, a Part IV employee must be allowed at least one rest day a week and the working hours of a Part IV Employee cannot exceed eight hours in one day or more than 44 hours in one week. Where overtime is required, a Part IV Employee generally cannot be required to work for more than 12 hours a day.

The pay of a Part IV employee who works on a rest day depends on whether that employee was working at his own request or at the request of his employer.

- If the period of work does not exceed half his normal hours of work:
  - (a) where a Part IV employee works at his own request on a rest day – basic rate of pay for half a day's work; or
  - (b) where a Part IV employee works at the request of his employer – basic rate of pay for one day's work.
- If the period of work is more than half but does not exceed his normal hours:
  - (a) where a Part IV employee works at his own request on a rest day – basic rate of pay for one day's work; or
  - (b) where a Part IV employee works at the request of his employer – basic rate of pay for two days' work.
- If the period of work exceeds his normal hours of work for one day:
  - (a) where a Part IV employee works at his own request on a rest day – (i) basic rate of pay for one day's work and (ii) a sum at the rate of not less than one and a half times his hourly basic rate of pay for each hour or part thereof that the period of work exceeds his normal hours of work for one day; or
  - (b) where a Part IV employee works at the request of his employer – (i) basic rate of pay for two days' work and (ii) a sum at the rate of not less than one and a half times his hourly basic rate of pay for each hour

or part thereof that the period of work exceeds his normal hours of work for one day.

Rules relating to overtime, which is defined as the number of hours worked in any one day or in any one week in excess of the limits specified in Part IV, is provided under Part IV of the Employment Act. Where overtime is required, a Part IV Employee generally cannot be required to work for more than 12 hours a day. A Part IV employee is also not permitted to work overtime for more than 72 hours a month.

Other protections afforded to Part IV Employees include not being required to work more than six consecutive hours without a break. Where the nature of the work requires continuous work for up to eight hours, breaks must be provided for meals, each break lasting at least 45 minutes.

Where an employee is required to work on a public holiday, the Employment Act prescribes how they should be paid or provided with a day off in substitution of that holiday. In particular, where a Part IV Employee is required to work on a public holiday, he would receive additional protection in the form of an extra day's salary (unless he agrees to substitute the public holiday with another day where he will receive a paid day off) in addition to being paid for his work on the holiday.

Overtime Regulations

Part IV Employees

Overtime pay is mandatory and is payable at a rate of 1.5 times the basic rate of pay. The maximum number of overtime hours a Part IV Employee is allowed to work is 72 hours a month.

Part-time employees

Where the part-time employee (who is also a Part IV Employee) works beyond his normal working hours for one day, the part-time employee is to be paid:

- at the part-time employee's hourly basic rate of pay for each hour or part thereof that exceeds the part-time employee's normal hours of work for one day but does not exceed the normal hours of work for one day of a similar full-time employee; and
- at 1.5 times the part-time employee's hourly basic rate of pay for each hour or part thereof that exceeds the normal hours of work for one day of a similar full-time employee.

Flexible Arrangements

It is becoming more common for companies to adopt flexible work arrangements such as flexi-time. Employers who allow for flexible work arrangements may be able to tap on Work-Life Grants offered by the government.

1.4 Compensation

An employee's wage is generally determined by the employment contract between them and the employer. Singapore does not have a minimum wage requirement.

That said, for Singapore citizens and permanent residents that are employees in the cleaning, security and landscape sectors, the Progressive Wage Model (PWM) helps to increase wages of the workers in these industries. The PWM provides a floor in terms of the wages of employees in those industries but more than that, it sets out wage ladders and effectively allows such employees to grow their salaries in the course of their careers as they acquire more skills. It is anticipated that the PWM will be introduced to other industries.

On a related note, it is also common for employers to provide discretionary payments to employees, and such payments may be termed as the thirteenth month bonus or Annual Wage Supplement (AWS) or performance bonus, pursuant to the employment contract.

The AWS deserves particular mention. While not compulsory, employers are often encouraged to provide this. It is also a common term in collective agreements found in Singapore.

1.5 Other Terms of Employment

Pursuant to the Tripartite Guidelines on Issuance of Key Employment Terms in Writing, the following key employment terms must be set out in writing:

- full name of employer;
- full name of employee;
- job title, main duties and responsibilities;
- start date of employment;
- duration of employment (if the employee is on a fixed-term contract);
- working arrangements (daily working hours, number of working days per week, rest days);
- salary period;
- basic salary;
- fixed allowances;
- fixed deductions;
- overtime pay period (if applicable);
- overtime rate of pay (if applicable);
- other salary-related components (bonuses and incentives);
- type of leave (eg, annual leave, sick leave and maternity leave);
- other medical benefits;
- probation period;
- notice period; and
- place of work (optional).

In relation to employment benefits, employees are statutorily entitled to the following.

Holiday, Annual Leave and Sick Leave Entitlements

Holidays

Employees are entitled to paid holidays on the gazetted public holidays. Where the public holiday falls on a rest day, the next working day will be a paid holiday. Where the public holiday falls on a day when the employee is not required to work, the employer must either give the employee a day off in lieu or pay the employee.

Annual leave

A Part IV Employee who has served an employer for a period of not less than three months is, in addition to the rest days, holidays and sick leave, entitled to a minimum of seven days of annual leave for the first twelve months of continuous service with the same employer, increasing to a maximum of 14 days of paid annual leave in their eighth and subsequent years of service.

Sick leave

Employees who have worked for at least three months are entitled to paid sick leave or hospitalisation leave. The number of days an employee is entitled to is dependent on the number of months of service completed. Employees who have worked for three months are entitled to five days of paid sick leave and 15 days of paid hospitalisation leave. The number of sick leave and hospitalisation leave days gradually increases to 14 days of paid sick leave and 60 days of paid hospitalisation leave once the employee has worked for six months.

Maternity and Paternity Leave

The relevant legislation in respect of family-related leave entitlements is the Employment Act and the Child Development Co-Savings Act (Cap. 38A, 2002 Rev. Ed.) (CDCA). The Employment Act is of general application to employees protected under the Employment Act, while the CDCA applies only to parents of children who are Singapore citizens.

Maternity leave

Mothers who have been employed for a continuous period of three months preceding the date of birth of the child are entitled to paid maternity leave as follows:

- 16 weeks if the child is a Singapore citizen under the CDCA (see Section 9 of the CDCA); or
- 12 weeks if the child is not a Singapore citizen (provided the mother is protected by the Employment Act).

Where the mother has been employed for less than three continuous months and is covered under the Employment Act, she will be entitled to 12 weeks of unpaid maternity leave.

Paternity leave

Fathers are entitled to two weeks paid of paternity leave under the CDCA provided:

- he was employed for a period of at least three months preceding the date of birth of the child;
- he is the natural father of the child;
- the child is a Singapore citizen; and
- he was lawfully married to the child's mother (i) at the time the child was conceived; or (ii) after the child was conceived but before the child's birth, whether or not the marriage remains subsisting at the time of birth of the child; or (iii) within twelve months from the date of birth of the child.

Adoptive fathers are also entitled to paid paternity leave under the CDCA provided:

- the child is a Singapore citizen;
- where the child is not a Singapore citizen, he, or his wife (if she is a joint applicant to the adoption), is a citizen of Singapore on the date the child is issued a dependant's pass;
- he has served his employer for at least three months before the eligibility date for the application to adopt the child;
- he is not the natural father of the child;
- the child must become a Singapore citizen within six months of the adoption; and
- the adoption must be formalised within a year of the application.

Childcare Leave

Employees protected under the Employment Act are entitled to two days of paid childcare leave if the child is below 7 years of age and the employee has been in service for a continuous period of three months. Childcare leave in accordance with the Employment Act is capped at 14 days in respect of any child.

The CDCA provisions are applicable to employees who have been in continuous service for three months, with children who are Singapore citizens. For employees with children below the age of 7, the maximum entitlement is six days per relevant period, tiered according to months of service. A "relevant period" refers to any mutually agreed-upon period of twelve months, or a calendar year.

Employees with children under the age of 2 are entitled to six days of unpaid infant care leave per year (regardless of the number of children), in addition to paid childcare leave as stated above.

Employees whose youngest child is above the age of 7 but below the age of 13 are eligible for two days of extended paid childcare leave.

Childcare leave cannot be carried forward and is capped per employee at:

- 42 days in respect of any qualifying child;
- 12 days (for extended childcare leave) in respect of any child; and
- six days of childcare leave and extended childcare leave per year.

Deductions

The Employment Act allows employers to make certain deductions from the salary of the employee. The more common statutorily permitted deductions include:

- deductions for absence from work;
- deductions or damage to or loss of goods expressly entrusted to an employee for custody or for loss of money for which an employee is required to account, where the damage or loss is directly attributable to his neglect or default;
- deductions made with the written consent of the employee for house accommodation supplied by the employer;
- deductions made with the written consent of the employee for amenities and services supplied by the employer as the Commissioner of Labour may authorise;
- deductions for the recovery of any advance, loan or unearned employment benefit, or for the adjustment of any overpayment of salary;
- deductions in accordance with the Central Provident Fund Act; and
- deductions made with the written consent of the employee and paid by the employer to any co-operative society registered under any written law for the time being in force in respect of subscriptions, entrance fees, instalments of loans, interest and other dues payable by the employee to such society.

It is pertinent to note that where deductions are made with the written consent of the employee, the Employment Act gives the employee a right to withdraw the written consent by written notice.

Common Clauses Found in Employment Contracts
Other common clauses include the following.

- Probationary clause – the period of time for probation of a new employee is one of the key employment terms that should be stated in the employment contract (see above). The period of probation may be extended by the employer if deemed necessary to do so.
- Confidentiality clause – employers should take care when drafting a confidentiality clause to particularise the information that falls within the scope of such a clause. It is also pertinent to note that having a confidentiality clause in an employment contract would have an impact on the effectiveness of other restrictive covenants in the same contract, if any (see **2. Restrictive Covenants**).
- Restrictive covenants – these clauses should be carefully crafted. The employer should also consider if they should be imposed in every case. Please refer to **2. Restrictive Covenants** on the enforceability of such clauses.
- A clause seeking confirmation from the employee that he is not subject to contract obligations due to his former employer – such clauses are important to protect against liability of the new employer. For example, new employees may be required to disclose to their new employer whether they are subject to restrictive covenants under their previous employment contract.
- Data protection clause – please refer to **3. Data Privacy Law**.

2. Restrictive Covenants

2.1 Non-competition Clauses

Under Singapore law, restrictive covenants are generally prima facie unenforceable, unless the employer is able to prove that it has a legitimate proprietary interest to be protected by the restrictive covenant. On top of this, the employer must show that the restrictive covenant in question is reasonable.

This involves a two-step process. First, the court will determine what the employer's legitimate interests are. In this regard, the Singapore courts have acknowledged the following as "protectable legitimate interests":

- trade secrets/confidential information;
- trade connections; and
- the maintenance of a stable and well-trained workforce.

It is pertinent to note that in cases where the legitimate interest is the protection of trade secrets/confidential information, the contract in question must not have some other clause that provides for the protection of the same (eg, a confidentiality clause). This is because the Singapore Court of Appeal has held that in order to enforce such a restrictive covenant, the employer/applicant must identify a legitimate interest that is over and above the protection of trade secrets (which is already protected by the other express provision(s) in the contract).

Second, the court will determine whether the covenant in question had been drafted reasonably, in a way that does not go beyond what is necessary to protect such interests. Reasonableness is determined having regard to the interests of the parties concerned, as well as the interests of the public. In this regard, the court would take into account the scope of the restraint, geographical extent of the restraint, duration of the restraint and whether consideration is paid for the duration of the restraint.

2.2 Non-solicitation Clauses - Enforceability/ Standards

Non-solicitation clauses are also within the body of restraint of trade clauses and are generally prima facie non-enforceable, unless the employer is able to prove that it has a legitimate proprietary interest to be protected by the restrictive covenant. In addition, it must be shown that the restraint of trade clause is reasonable with reference to both the parties in question and the public.

The factors that the court takes into consideration in determining the validity of such restrictive covenants are discussed in **2.1 Non-competition Clauses**.

3. Data Privacy Law

3.1 General Overview

The primary legislation governing the use of personal data in Singapore is the Personal Data Protection Act 2012 (PDPA). The PDPA is a regime based on consent for the collection, use and/or disclosure of one's personal data.

Employers should seek prior consent and inform employees of the purpose where their personal data is collected, used and/or disclosed. This may be achieved by inserting an appropriate term into the employment contract and establishing the suitable data protection policy.

That said, the PDPA dispenses with the need for consent where an employee's personal data is used for the purpose of managing or terminating employment relationships (eg, using the employee's bank account details to issue salaries, monitoring the employee's use of a company computer, posting employees' photographs on the intranet and managing staff benefit schemes) and evaluative purposes (eg, assessing whether a promotion is suitable). While consent is not required when the employer is collecting or using and/or disclosing personal data for the purposes of managing or terminating the employment relationship, employers should still notify the employee of the purposes of such collection, use or disclosure. However, where the collection, use and/or disclosure is for evaluative purposes, the employer does not need to notify the employee of the purpose of the same.

Further, the PDPA does not require the employer to seek consent of the individual involved when collecting personal data that is publicly available (eg, such as from social networking sources or newspapers and websites).

The personal data of employees should only be kept for as long as necessary for business or legal purposes. There is, however, no specified fixed duration for which an organisation can retain personal data as each organisation may have different business needs.

Employers should note that its employees have the right to obtain access and request corrections to their personal data.

On a different note, organisations are responsible for the personal data in its possession or under its control, including breaches of the PDPA caused by their employees acting in the course of their employment. However, if the organisation can show that it had taken such steps as were practicable to prevent the employee in question from committing the offence, then that could prevent liability from attaching to the organisation. Thus, it is important for employers to have proper personal data protection policies and practices in place, and ensure that its employees are aware of such policies and practices.

4. Foreign Workers

4.1 Limitations on the Use of Foreign Workers

All foreign workers are required to have a valid pass before they are allowed to work in Singapore. The type of pass required, and in turn the eligibility requirements, are dependent on various factors, including the industry in question and position for which the foreign worker is being employed. Please see **4.2 Registration Requirements** for more details.

4.2 Registration Requirements

The employment of foreign workers is regulated under the Employment of Foreign Manpower Act (Cap. 91A, 2009 Rev. Ed.) (EFMA). There are various types of work passes, and the type of work pass required depends on the area of work that the foreign worker would be engaged for in Singapore. These work passes include the following.

- Professionals:
  - (a) Employment Pass – for foreign professionals, managers and executives; candidates must earn at least SGD3,600 a month and have acceptable qualifications;
  - (b) Entrepass – for foreign entrepreneurs who wish to start and operate a new business in Singapore; and
  - (c) Personalised Employment Pass – for high-earning existing Employment Pass-holders or overseas foreign professionals.
- Skilled and semi-skilled workers:
  - (a) S Pass – for mid-level skilled staff; candidates need to earn at least SGD2,300 a month and meet the assessment criteria; and
  - (b) Work Permit – for semi-skilled foreign workers.

Further, the number of foreign workers holding a work permit or an S pass that an employer may employ is subject to a levy and quota. The levy is a pricing mechanism that regulates the number of foreign workers in Singapore. The quota (also known as a dependency ratio ceiling) calculates

the maximum ratio of foreign workers to the total workforce that the company can apply.

Levy rates and quotas are constantly reviewed. In the 2019 Budget, it was announced that the quota for the services industry would be reduced on 1 January 2020, and further reduced on 1 January 2021. When the quota is reduced, companies will not be able to renew work passes of foreign workers that have exceeded the revised quota. However, for foreign workers above the revised quota limits, companies can retain the workers until the expiry of their work pass to avoid disrupting existing operations. As for the quotas, the 2019 Budget announced a deferment of the previously announced levy increases for the marine shipyard and process sectors.

On a different note, it should be noted that prior to submitting applications for Employment Passes, the employer must advertise the job vacancies on the Jobs Bank, which is administered by Workforce Singapore (WSG). The advertisement should include the following elements:

- position and job description;
- job requirements (qualifications, skills required, experience);
- salary range; and
- expiry date.

The advertisement should be open to Singaporeans, adhere with the Tripartite Guidelines on Fair Employment Practices and run for at least 14 calendar days before the Employment Pass is applied for. Where changes are made to the advertisement, the new advertisement must remain published for another 14 days.

Employers are exempt from the advertising requirement in any of the following cases.

- Where the company has fewer than ten employees.
- The job position is paying a fixed monthly salary of SGD15,000 and above.
- The job is to be filled by an intra-corporate transferee (ICT). Under the WTO's General Agreement on Trade in Services (WTO GATS), ICTs refer to those holding senior positions in the organisation or have an advanced level of expertise.
- The job is necessary for short-term contingencies (ie, a period of employment in Singapore for not more than one month).

That said, employers are encouraged to advertise their job vacancies on the Jobs Bank even if they are eligible for exemption under one of the circumstances stated above.

5. Collective Relations

5.1 Status/Role of Unions

Trade unions are associations of workers or employers that seek to regulate relations between employers and employees. The role of the trade union includes:

- promoting good industrial relations between workers and employers;
- improving the working conditions, as well as the economic and social status, of workers; and
- increasing productivity for the benefit of workmen, employers and the economy of Singapore.

Generally, trade unions would seek recognition, negotiate a collective agreement and, in the event of a trade dispute that cannot be resolved after conciliation, refer the dispute to the Industrial Arbitration Court.

Since 2015, trade unions have been allowed to represent executive employees collectively. However, employees are excluded from representation by the unions (see Tripartite Guidelines on Extending the Scope of Union Representation for Executives) if they:

- are in a senior management position or (i) have control and supervision of major business operations, (ii) are accountable for operational performance, (iii) do the planning of business policies and strategies, and (iv) provide leadership to other employees;
- have decision-making powers on any industrial matter including the employment, termination of employment, promotion, transfer, reward or discipline of other employees;
- represent the employer in negotiations with the union on any industrial matter;
- have access to confidential information relating to the budget and finances of the employer, any industrial relations matter or the salaries and personal records of other employees; or
- are in a role that may give rise to a conflict of interest if he is represented by a trade union.

Legislation that regulates trade union activities and industrial action includes the Trade Unions Act (Cap. 333, 2004 Rev. Ed.) and Trade Unions Regulations, Trade Disputes Act (Cap. 331, 2014 Rev. Ed.), Industrial Relations Act (Cap. 136, 2004 Rev. Ed.), Part III of the Criminal Law (Temporary Provisions) Act (Cap. 67, 2000 Rev. Ed.) (CLTPA) and the Singapore Labour Foundation Act (Cap. 302, 2014 Rev. Ed.).

Under the Industrial Relations Act, employees should be free to become a member of and participate in trade union activities. Protections afforded to employees include the fact that an employer can be convicted of an offence where it is found that they have discriminated against a person by rea-

son of the circumstance that that employee is or proposes to become an officer or member of a trade union or an association that has applied to be registered as a trade union. The Industrial Relations Act also sets out the specific provisions relating to the process for seeking recognition, invitation to negotiate a collective agreement and managing industrial disputes.

Strikes and lock-outs, while a rarity in Singapore, are not strictly prohibited. Rather, these activities are regulated under the Trade Disputes Act and the CLTPA. Under the CLTPA, it is illegal to strike and lock out employees who are employed in providing the following essential services: water, gas and electricity services. For other essential services, the CLTPA requires 14 days' notice to be given to the employer/employees of the intention for said strike or lock-out. Further, a copy of the notice shall be delivered to the Commissioner for Labour within three days after the notice is given. These requirements must be met, failing which the strike or lock-out will be deemed illegal.

5.2 Employee Representative Bodies

Under Singapore law, trade unions are recognised as the representative body of employees.

5.3 Collective Bargaining Agreements

Where a trade union has been accorded recognition by an employer under the Industrial Relations (Recognition of a Trade Union of Employees) Regulations, the trade union and the employer may begin negotiations to enter into a collective agreement in respect of that class of employees. The collective agreement is valid for a minimum period of two years and a maximum period of three years.

Notwithstanding the above, the Industrial Relations Act excludes the following matters from negotiation:

- promotion by an employer of any employee from a lower grade or category to a higher grade or category;
- transfer by an employer of an employee within the organisation of an employer's profession, business, trade or work, provided that such transfer does not entail a change to the detriment of an employee in regard to his terms of employment;
- employment by an employer of any person that he may appoint in the event of a vacancy arising in his establishment;
- termination by an employer of the services of an employee by reason of redundancy or by reason of the reorganisation of an employer's profession, business, trade or work, or the criteria for such termination;
- dismissal and reinstatement of an employee by an employer in circumstances in which Section 35(3) of the Industrial Relations Act applies; and
- assignment or allocation by an employer of duties or specific tasks to an employee that are consistent or compatible with the terms of his employment.

6. Termination of Employment

6.1 Grounds for Termination

Either the employer or the employee may terminate the employment contract with notice or paying salary at the gross rate of pay in lieu of notice.

Where the termination of the contract of service between an employer and an employee is at the initiative of the employer, regardless of whether the termination was with or without notice and for cause or otherwise, this falls within the definition of "dismiss" under the Employment Act. "Dismiss" further includes the resignation of an employee if the employee can show, on a balance of probabilities, that the employee did not resign voluntarily but was forced to do so because of any conduct or omission, or course of conduct or omissions, engaged in by the employer.

An employee thus can be dismissed with or without notice. However, where an employer seeks to dismiss an employee without notice on the grounds of misconduct, the employer can only do so after due inquiry. For further information, please refer to **6.3 Dismissal for (Serious) Cause (Summary Dismissal)**.

Generally, no reasons are required to be given when an employee is terminated with notice in accordance with the terms of the contract. Indeed, the Tripartite Guidelines on Wrongful Dismissals expressly state that dismissals with notice are presumed not to be wrongful. The Tripartite Guidelines on Wrongful Dismissals is an official document published to provide illustrations to guide employers, employees, mediators and adjudications on what constitutes dismissals that are not wrongful and what constitutes wrongful dismissal under the Employment Act. For an employee to succeed in claiming that a dismissal with notice is wrongful where no reason has been given for the dismissal, the employee must substantiate a wrongful reason (eg, discrimination, deprivation of benefit or punishment for exercising an employment right) for the dismissal.

In all cases where an employee considers that he has been dismissed without just cause or excuse, the employee may lodge a claim with the Employment Claims Tribunal (ECT) for either reinstatement in his former employment or compensation. However, the employee will have to do so within six months from the date of his or her termination.

Redundancy

On a related note, redundancy is an accepted reason for termination. Under Singapore law, there is no statutory frame-

work for redundancies nor is there a requirement to make redundancy or severance payments. These are generally a matter of contract. When negotiating collective agreements, the unions would generally include a term on redundancy payments.

That said, the Tripartite Advisory for Managing Excess Manpower and Responsible Retrenchment is instructive for the process of responsible retrenchment. Under this advisory, responsible employers are encouraged to have a longer retrenchment notice period as compared to the usual termination of employment, or to pay in lieu of such notice. Employees with two years' service or more are eligible for retrenchment benefits. Employees with less than two years' service may be granted an ex gratia payment.

The quantum of retrenchment benefits is dependent on what is provided for in the collective agreement or employment contract. Where the collective agreement or employment contract is silent on this, the quantum is to be negotiated between the employee and employer. The prevailing rate for retrenchment benefits ranges from two weeks to one month's salary per year of service, taking into consideration the financial position of the employer and industry standards.

For completeness, employers must notify the Ministry of Manpower (MOM) of retrenchments within five working days after they notify their employees if they have at least ten employees and at least five employees have been retrenched within any six-month period. This is set out in the Tripartite Guidelines on Mandatory Retrenchment Notifications. However, even in cases where notification is not mandatory (eg, where the company has fewer than ten employees), employers are still encouraged to notify the MOM to enable Workforce Singapore and the tripartite partners to help affected employees find alternative employment. Failure to comply with the mandatory retrenchment notifications is a civil contravention for which administrative penalties can be imposed.

6.2 Notice Periods/Severance

An employment contract usually provides for the notice period that must be given by either party to terminate the employment agreement. The period of notice must be the same for both the employer and employee. However, if the employment contract is silent as to the length of the notice period or if the stipulated notice period is shorter than the statutory minimum notice period, and the employee is covered under the Employment Act, the minimum notice period under the Employment Act will apply.

Under the Employment Act, the length of the notice period depends on the employee's length of service:

- employed for less than 26 weeks – notice period of one day;
- employed for 26 weeks or more but less than two years – notice period of one week;
- employed for two years or more but less than five years – notice period of two weeks; or
- employed for five years or more – notice period of four weeks.

6.3 Dismissal for (Serious) Cause (Summary Dismissal)

Pursuant to Section 14 of the Employment Act, an employer may summarily dismiss an employee on the grounds of misconduct inconsistent with the fulfilment of the express and implied conditions of his service after due inquiry. It is common also for employment contracts to include a clause on specific circumstances that will allow the employer to terminate the employment contract summarily without notice.

The Employment Act does not provide any guidance on what "due inquiry" entails. However, the following is a useful guide:

- the employee should be informed of the allegations against him;
- the employee should be given an opportunity to defend himself at the inquiry that is held; and
- the person hearing the inquiry should be independent.

To ensure that there is some consistency in treatment in respect of disciplinary inquiries, it is advisable to have a clear disciplinary policy in place. Assuming the policy has been properly crafted, compliance with the policy will reduce the risk of allegations that no due inquiry was carried out prior to the termination.

Where the employer has failed to conduct due inquiry into the misconduct prior to terminating the employee, the terminated employee would be entitled to payment of his salary for the period of time that the employer would have taken to conduct the due inquiry.

For the purposes of conducting an inquiry into the misconduct, the Employment Act allows the employer to suspend the employee from work for (i) a period not exceeding one week, or (ii) such longer period as the Commissioner of Labour may determine on an application by the employer, but must pay the employee at least half the employee's salary during the period the employee is suspended from work.

6.4 Termination Agreements

The use of a mutual separation agreement or termination agreement is a common means of terminating an employment contract. Generally, this involves both the employer and employee coming to an agreement as to the terms of the separation.

Typically, such agreements will contain a clause requiring the employee to release the employer from all claims and a clause requiring the employee not to disparage the employer. This serves to protect the employer from claims relating to the termination. Sometimes, the agreement will also contain restrictive covenants or seek to amend the scope of the restrictive covenants set out in the employment agreement. In order for the restrictive covenants to be enforceable, please take note of the comments in **2. Restrictive Covenants**.

As with any contract, for the mutual separation agreement to be enforceable, there must be a valid offer, acceptance, consideration and the intention to create legal relations.

6.5 Protected Employees

Employers are not entitled to terminate:

- any female employee while they are on maternity leave (Section 81 of the Employment Act);
- employees below 62 years of age (or the prescribed retirement age) on the basis of their age (Section 4(2) of the Retirement and Re-employment Act (Cap. 274A, 2012 Rev. Ed.));
- employees for their participation in trade union activities (Section 17(b) of the Employment Act);
- employees for their national service duties or liabilities (Section 22(1) of the Enlistment Act (Cap. 94, 2001 Rev. Ed.)); or
- employees on the ground that they have made a report in respect of a health and safety issue or assisted with a health and safety investigation (Section 18(2) of the Workplace Safety and Health Act (Cap. 254A 2009 Rev. Ed)).

7. Employment Disputes

7.1 Wrongful Dismissal Claim

The Tripartite Guidelines on Wrongful Dismissal are instructive in identifying what constitutes wrongful dismissal under the Employment Act.

Types of wrongful dismissal include:

- dismissal on discriminatory grounds on the basis of race, age, gender, religion or marital status and family responsibilities or disability;
- dismissal to deprive an employee of benefits or entitlements; and
- dismissal to punish an employee for exercising an employment right.

An employee may bring a wrongful dismissal claim to the Employment Claims Tribunal or to the Singapore State or High Courts. The ECT may only hear claims up to SGD20,000, or up to SGD30,000 where applicants go through the Tripartite Mediation Framework or mediation assisted by unions under the Industrial Relations Act.

Where an employee seeks to bring a wrongful dismissal claim to the ECT, the employee must first undergo mediation with the Tripartite Alliance for Dispute Management. Only where mediation is unsuccessful are parties able to proceed to the Employment Claims Tribunal.

Where the ECT finds that a dismissal was wrongful, the employer may be ordered to:

- reinstate the employee to his or her former job and to pay the employee for any income loss due to the wrongful dismissal; or
- pay the employee a sum of money as compensation.

From the court perspective, the typical remedy for wrongful termination would be the remuneration and benefits that he is contractually entitled to during the period from when the employer had wrongfully terminated until the time the employer could lawfully terminate the contract.

7.2 Anti-discrimination Issues

Singapore does not have legislation that deals specifically with claims on anti-discrimination grounds. Where an employee has been dismissed on discriminatory grounds, this would fall within the realm of a wrongful dismissal, as discussed in **7.1 Wrongful Dismissal Claim**.

That said, the Tripartite Guidelines on Fair Employment Practices (“TAFEP Guidelines”) are instructive on the issue of discrimination in the workplace and the courses of action that may be taken upon the infringing organisation.

In summary, where employment discrimination occurs, the individual who has encountered such discrimination may contact the Tripartite Alliance for Fair Employment Practices (TAFEP) for assistance. The TAFEP would then contact and work with the employer in question to put fair and responsible employment practices in place. In the event that the employer is unresponsive or reluctant to do so, the TAFEP may refer the case to the Ministry of Manpower for further investigation.

The Ministry of Manpower takes a firm stance against discrimination in the workplace. Where a complaint is substantiated upon further investigation, and where the employment continues in its infringing practices, the Ministry of Manpower may take administrative action, including the curtailment of their work pass privileges. The extent of such action depends on the severity of each case.

8. Dispute Resolution

8.1 Judicial Procedures

Employment claims may be heard by the Employment Claims Tribunal or the courts.

The ECT seeks to provide a low-cost and quick dispute resolution process. For that reason, lawyers are not permitted to represent clients at ECT proceedings. For completeness, as ECT proceedings are private, the media and members of the public are generally not allowed to be present.

The ECT has limited jurisdiction.

Firstly, it can only hear:

- statutory salary-related claims; eg, non-payment of salary, failure to make payment of maternity benefits or overtime payments;
- contractual salary-related claims; eg, retrenchment benefits or bonus or AWS stated in the contract;
- claims for wrongful dismissal; and
- claims for salary in lieu of notice.

Secondly, from a quantum perspective, the ECT may hear claims up to SGD20,000, or up to SGD30,000 where applicants go through the Tripartite Mediation Framework or mediation assisted by unions under the Industrial Relations Act. Where claims exceed the claim limits stated above, they can still be brought before the ECT but the claimant must abandon all claims beyond the aforesaid limits.

Thirdly, claims can only be filed against a respondent located in Singapore.

An ECT order can be enforced in the same manner as an order made by the Singapore District Court.

Where an employment claim does not fall within the jurisdiction of the ECT, the claimant can commence proceedings in court. To commence a claim, the claimant would have to file an Originating Process (eg, a Writ or an Originating Summons). Thereafter, the usual court processes will ensue. The court process is generally public in nature and will be more protracted than ECT proceedings.

8.2 Alternative Dispute Resolution

Arbitration as an alternative dispute mechanism is available to resolve employment disputes where there is a valid arbitration agreement within the employment contract or if parties agree to undergo mediation after the dispute arises.

Apart from arbitration, parties may also turn to mediation to resolve employment disputes. Indeed, mediation has taken a front seat in resolving employment disputes. Following the recent amendments to the Employment Act that took effect from 1 April 2019, all employees covered under the Employment Act who wish to file a claim against their employers will first undergo mediation with the Tripartite Alliance for Dispute Management. Only where mediation is unsuccessful are parties able to proceed to the Employment Claims Tribunal.

8.3 Awarding Attorney's Fees

As representation by a lawyer is not allowed for claims brought in the Employment Claims Tribunal, there are no lawyer's fees to be paid to the prevailing party. However, the ECT can order one party to pay costs to the other party.

Where claims are brought in the High Court of Singapore, the prevailing party may be awarded costs, which includes lawyer's fees.

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