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EMPLOYMENT LAW EDITION
SEPTEMBER 2022

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LEGISLATION / REGULATORY

Enhancements to Work Pass Framework in Singapore

Recent enhancements to Singapore’s work pass framework represent Singapore’s commitment as a destination for doing business. These enhancements are aimed at securing Singapore’s place in the post-COVID-19 world, and are part of the Singapore Government’s concerted efforts to focus on attracting and retaining top talent, to cement Singapore as a hub of innovation, entrepreneurship and growth.

On 29 August 2022, four enhancements to Singapore’s work pass framework to strengthen Singapore’s position as a global hub for talent were announced.

In summary, the enhancements will apply to the following target groups:

Target Group	Work pass framework enhancements	Implementation date
Talent comparable to top 5% of Employment Pass (“EP”) holders (Earning fixed monthly salary of S\$30,000 and above)	Introduction of the new Overseas Networks & Expertise Pass (“ONE Pass”), a personalised five-year work pass that is targeted towards persons earning a fixed monthly salary of at least S\$30,000 or with outstanding achievements in certain fields	1 January 2023
Talent comparable to top 10% of EP holders (Earning fixed monthly salary of S\$22,500 and above)	Introduce new public benchmark pegged to top 10% of EP holders	1 September 2023
All EP applications	Changes to enable companies to be more responsive to business needs	29 August 2022 / 1 September 2022
Experienced tech professionals with skills in shortage	Introduction of 5-year EP option	1 September 2023

We elaborate below.

Introduction of the new ONE Pass

Key benefits

The ONE Pass will be implemented on 1 January 2023. It will grant pass holders several key benefits, compared with the general EP, as summarised below:

Benefits	ONE Pass	General EP
Flexibility	Grants pass holders the flexibility to concurrently start, operate and work for	Tied to the specific job that the pass holder is doing

Benefits	ONE Pass	General EP
	multiple companies in Singapore at any one time.	
Duration	Five years	Typically two to three years
Reapplication in a job change	No need to reapply for a new pass if the holder changes job	New employer has to apply for a new EP for the holder
Spousal employment	The holder's spouse will be allowed to work, after obtaining a Letter of Consent	The holder's spouse has to obtain an EP, S pass or work permit if they wish to work

Qualifying criteria for the ONE Pass

The ONE Pass will only be open to candidates who are working for an “established” company overseas, or will be working for an “established” company in Singapore. To be considered established, a company should have a market capitalisation of at least US\$500 million or an annual revenue of at least US\$200 million.

Further, the candidate must meet the following criteria:

Based on salary

Existing work pass holders and overseas candidates (i.e. those who are not existing work pass holders) can apply if they meet either of the following salary criteria:

- (a) earn a fixed monthly salary of at least S\$30,000 (or its equivalent in foreign currency) within the last one year; or
- (b) show that they will earn a fixed monthly salary of at least S\$30,000 under their future employer based in Singapore.

Based on achievements

Individuals with “outstanding achievements” in the arts and culture, sports, science and technology, and academia and research can qualify for the ONE Pass, even if they do not meet the salary criterion.

Assessment of eligibility for renewal

The Ministry of Manpower (“**MOM**”) will request information from ONE Pass holders on a yearly basis to ensure that they are utilising the flexibilities accorded to contribute meaningfully. The information will be in relation to details on all the holder’s professional activities over the past year, and the annual salary earned from such professional activities. The information will contribute to the MOM’s assessment of the holder’s eligibility for renewal.

Introduction of new public benchmark for top 10% of EP holders

A new benchmark pegged to the top 10% of EP holders – those earning a fixed monthly salary of S\$22,500 or more – will be implemented from 1 September 2023 to provide greater clarity and transparency on the MOM's work pass framework.

This benchmark is relevant for 3 specific areas:

- (a) the Fair Consideration Framework (“**FCF**”),
- (b) the upcoming Complementarity Assessment Framework (“**COMPASS**”); and
- (c) the personalised employment pass (“**PEP**”).

Presently, under the FCF, prior to applying for an EP, employers will have to first advertise a vacancy on the MyCareersFuture job portal, save where exemptions apply. One such exemption was if the salary for the job vacancy was S\$20,000 and above. Similarly, earlier announcements stated that foreigners earning a fixed monthly salary of at least S\$20,000 were to be exempted from COMPASS.¹ With the introduction of the new benchmark, the S\$20,000 threshold for both the FCF advertisement requirement and for the upcoming COMPASS would be raised to S\$22,500.

In respect of the PEP, the salary criterion for an application for a PEP will be raised from S\$12,000/S\$18,000 (as the case may be) to S\$22,500.

Changes to general EP applications

Two changes will be implemented to enable companies to be more responsive to business needs:

- (a) The FCF requirement to advertise a vacancy on MyCareersFuture job portal before an employer can apply for a work pass has been restored to 14 days with effect from 1 September 2022.²
- (b) EP applications will be processed, or an update will be given to employers within 10 business days. This was implemented with immediate effect from 29 August 2022.

Introduction of five-year EP option for experienced tech professionals with skills in shortage

From 1 September 2023, experienced tech professionals with skills in shortage who meet certain criteria (elaborated below) may apply for a longer EP of five years. This is longer compared with the typical pass duration of two to three years. According to the MOM, a longer pass duration is intended to give greater certainty to experienced tech professionals as well as businesses hiring them, and allow Singapore to anchor tech capabilities in areas where the local pipeline is still being developed.

¹ There are other alternative requirements which employers can rely on to be exempted from COMPASS which will not be discussed here.

² The period of such advertisement was increased to 28 days in October 2020 during the COVID-19 pandemic to give jobseekers more time to respond to job openings.

Eligible candidates must meet all of the following criteria:

- (a) fill specific tech occupations on the COMPASS Shortage Occupation List (“**SOL**”);
- (b) earn a fixed monthly salary of at least S\$10,500 (for candidates aged 36 and above, the salary required increases with age up to a maximum of S\$13,500 at age 45 and beyond); and
- (c) pass COMPASS and score at least ten points on the “diversity” criterion.

The SOL is a list that recognises EP holders in occupations requiring highly specialised skills currently in shortage in the local workforce. It is determined by a tripartite evaluation process that takes into account industry needs and local workforce development efforts. The first SOL will be announced by the MOM in March 2023.

Announcements on Workplace Safety and Health Issues

Following a concerning rise in workplace fatalities this year, new measures to strengthen workplace safety and health (“**WSH**”) will be implemented. These changes are important and should be carefully noted.

In particular, top management, directors of companies and those in charge of WSH matters should ensure that proper risk assessments are conducted, safe work procedures are in place and employees are trained in and follow such work procedures.

These steps evidence the company’s commitment to safety and could provide a defence to any prosecution under the WSH laws, or be of strong mitigatory value which would help reduce any eventual penalty imposed. A company’s top management and those in charge of WSH issues should also keep in mind that breaches of WSH laws can lead to personal liability if the individual is found culpable for safety lapses.

Six-month “Heightened Safety” period from 1 September 2022 to 28 February 2023

On 1 September 2022, the Ministry of Manpower (“**MOM**”) announced a number of new measures to strengthen WSH and improve WSH oversight. While the MOM recognises that many companies are still trying to overcome project delays resulted from the COVID-19 pandemic, and some sectors are still recovering from the impact of the pandemic, it emphasised that safety must nonetheless remain a priority for all employers.

A “Heightened Safety” period will be introduced from 1 September 2022 to 28 February 2023. During this period, if the MOM finds serious WSH lapses (such as unsafe workplace conditions or poor risk controls) following serious or fatal workplace accidents, the MOM may debar companies from employing foreign employees for up to three months. The MOM may also require chief executives to personally account to MOM and take responsibility for rectifications.

*Companies to perform Safety Time Out (“**STO**”) activities from 1 to 15 September 2022*

The companies in the following industries are required to conduct a mandatory STO any time from 1 to 15 September 2022 to review their safety procedures and complete the STO checklist³:

- (a) all companies in the construction, manufacturing, marine, process or transport and storage industries; and
- (b) all companies in other industries, which use heavy or industrial vehicles (e.g. buses, lorries, prime movers, forklifts, cranes, wheel-loader).

³ Please refer to the following link on the MOM website for the STO checklist https://www.mom.gov.sg/-/media/mom/documents/press-releases/2022/sto-checklist_1-sep-22.pdf.

According to the MOM,⁴ the STO activities can take various forms, including (but not limited to) the following:

For top management⁵:

- (a) Personally conduct a walk-about on site to encourage workers to report safety risks and concerns to supervisors. Reassure workers that they will not be penalised for surfacing their safety concerns (if any).
- (b) Emphasise top management's commitment to safety and inform site/project managers and supervisors that any safety risks should be resolved before work commencement.
- (c) Share learning points from recent fatal accidents from the WSH Alerts⁶ with all workers.

For WSH personnel:

- (a) Identify any new risks that were not factored into their company's risk assessment, and devise control measures to mitigate these risks. Pay special attention to mitigate the risks arising from vehicular-related accidents.
- (b) Ensure the implementation of the control measures in their company's Risk Assessment.
- (c) Hold workshop or meetings with workers to recap basic site safety, and how they can uphold good WSH standards.

The length of the STO should be sufficiently long to review risks corresponding to the scale of the operations. For companies that need to operate on a 24/7 basis, the STO can be conducted for different teams of workers separately, so that critical work can proceed at all times.

Companies will be debarred from employing new foreign employees for a month if the MOM finds that the STO activities were not done by 15 September 2022. Companies are highly encouraged to retain evidence of STO activities.

Targeted measures to be introduced for the construction sector from 1 October 2022

A new harmonised set of disqualification criteria across all public sector construction tenders will be introduced. This will align the evaluation criteria and temporarily disqualify contractors with poor WSH performance from participating.

The Demerit Point System (DPS) will be revised, with a lower threshold for issuing demerit points. More demerit points will be issued for Workplace Safety and Health Act ("WSHA") breaches. Errant companies with consistently poor WSH performance will reach the penalty thresholds more quickly, after which they will be debarred from hiring foreign employees for up to two years.

⁴ See the annex entitled "STO circular 1 Sep 22" to the MOM press release on 1 September 2022.

⁵ "Top management" refers to the chief executive, managing director, or other similar officer in the company purporting to act in any such capacity.

⁶ Please refer to the following link <https://www.tal.sg/wshc/resources?keyword=alert>.

A Multi-Sectoral Workplace Safety Taskforce will be set up, advised by an external experts panel. The external panel will comprise representatives from key government agencies. The taskforce will conduct sectoral deep dives into work practices and industry structures to strengthen safety practices and outcomes.

Approved Code of Practice (“ACOP”) for company directors’ workplace safety and health duties to be gazetted later this year

On 29 April 2022, Senior Minister of State, Ministry of Defence and Ministry of Manpower Mr Zaqy Mohamad (“**SMS Zagy**”) announced that the MOM and Workplace Safety and Health Council were consulting their tripartite partners and industry associations to develop a new ACOP for company directors’ WSH duties under the WSHA. The ACOP aims to provide clarity and enhance ownership of chief executives and board of directors’ WSH roles and duties. At the time, the indication was that the ACOP would be published by early 2023.

On 1 August 2022, and in response to a speech by Melvin Yong, Director (Industrial Relations Field) at the National Trades Union Congress about rising workplace fatalities and injuries, SMS Zaqy stated in Parliament that the ACOP will be gazetted later this year to strengthen management commitment to WSH. The MOM had completed the first round of industry consultation and commenced public consultation in August 2022.

As pointed out by SMS Zagy, a company, its leaders and its board can and will be prosecuted under the WSHA if found to be culpable for safety lapses. The courts will consider the ACOP when assessing the culpability of a company, its leaders and its board of directors.

To round off, SMS Zagy observed that an analysis of recent fatal accidents showed that many companies did not conduct their risk assessments or follow safe work procedures. It would be in the interests of companies and their management to take the safety requirements seriously, and review existing work procedures and processes, particularly in light of the upcoming ACOP.

CASE

Singapore High Court Revises Sentencing Frameworks For Bodies Corporate Under Workplace Safety And Health Act 2006

In *Public Prosecutor v Manta Equipment (S) Pte Ltd* [2022] SGHC 157, a three-judge *coram* of the General Division of the High Court (“**High Court**”) reviewed and revised the sentencing frameworks relating to bodies corporate set out in two earlier High Court decisions for the offence under section 12(1) read with section 20 of the Workplace Safety and Health Act (“**WSHA**”), namely, the breach of an employer’s duty to take reasonably practicable measures to ensure the safety and health of its employees.

The new sentencing framework (which comprises a two-stage sentencing approach with sentencing benchmarks) takes a different approach to harm from the earlier frameworks. The earlier frameworks placed particular emphasis on potential harm, making this the dominant consideration in determining an indicative sentence. The approach in the new sentencing framework is to evaluate the level of harm as a whole, including both the potential harm and the actual harm. The new sentencing framework provides greater clarity and consistency for future cases.

Notably, the High Court also indicated its provisional view that the two-stage sentencing approach should, in principle, apply to all offences under Part 4 of the WSHA (which sets out duties in relation to different categories of stakeholders in the workplace) punishable under section 50 of the WSHA, regardless of whether the offender is a body corporate or natural person. Additionally, the newly enunciated sentencing benchmarks would apply also to bodies corporate.

We set out a high-level summary of the new sentencing framework below.

Determine the level of harm and level of culpability based on the following factors:

Harm (non-exhaustive)

- Seriousness of harm risked
- Likelihood of harm arising
- Number of people likely to be exposed to risk of harm

Culpability (non-exhaustive)

- Number of breaches or failure
- Nature of breaches
- Seriousness of breaches
- Whether breaches were systematic or isolated
- Whether breaches were intentional, rash or negligent



1st Stage
Derive
indicative
starting
point

Based on the level of harm and culpability, derive the indicative starting point:

Culpability \ Harm	Low	Moderate	High
High	\$150,000 to \$225,000	\$225,000 to \$300,000	\$300,000 to \$500,000
Moderate	\$75,000 to \$150,000	\$150,000 to \$225,000	\$225,000 to \$300,000
Low	Up to \$75,000	\$75,000 to \$150,000	\$150,000 to \$225,000

Calibrate the starting sentence according to offender-specific aggravating and mitigating factors



Aggravating factors (non-exhaustive)

- Actual harm caused
- Breach was a significant cause of the harm that resulted
- Offender had cut costs at the expense of the safety of the workers to obtain financial gain
- Deliberate concealment of the illegal nature of the activity
- Obstruction of justice
- Existence of relevant antecedents, such as whether the offender had a poor record in respect of workplace health and safety
- Falsification of documentation or licenses
- Breach of court order
- Deliberate failure to obtain or comply with relevant licenses in order to avoid scrutiny by the authorities

Mitigating factors (non-exhaustive)

- High level of cooperation with the authorities
- Timely plea of guilt
- Offender has voluntarily taken steps to remedy the breach or prevent future occurrences of similar breaches
- Offender has a good health and safety record
- Offender has effective health and safety procedures in place

If you would like information and/or assistance on the above or any other area of law, you may wish to contact the Partner at WongPartnership whom you normally deal with or any of the following Partners:



Jenny TSIN
Co-Head – Employment
d: +65 6416 8110
e: jenny.tsin@wongpartnership.com
Click [here](#) to view Jenny's CV.



Vivien YUI
Co-Head – Employment
d: +65 6416 8009
e: vivien.yui@wongpartnership.com
Click [here](#) to view Vivien's CV.

 Connect with WongPartnership.

SOME OF OUR OTHER UPDATES

DATE	TITLE
10 August 2022	Managing Internal and External Insolvency: A Checklist For In-House Counsel
20 July 2022	Data Protection Quarterly Updates (April – June 2022)
19 July 2022	PRC Administrative Rules for Cross-Border Data Transfer Security Assessment
18 July 2022	Singapore High Court Clarifies that Hong Kong Non-Money Judgments Are Not Registrable in Singapore Under the Reciprocal Enforcement of Judgments Act 1959

WPG MEMBERS AND OFFICES

- contactus@wongpartnership.com

SINGAPORE

-

WongPartnership LLP
12 Marina Boulevard Level 28
Marina Bay Financial Centre Tower 3
Singapore 018982
t +65 6416 8000
f +65 6532 5711/5722

CHINA

-

WongPartnership LLP
Shanghai Representative Office
Unit 1015 Link Square 1
222 Hubin Road
Shanghai 200021, PRC
t +86 21 6340 3131
f +86 21 6340 3315

MYANMAR

-

WongPartnership Myanmar Ltd.
Junction City Tower, #09-03
Bogyoke Aung San Road
Pabedan Township, Yangon
Myanmar
t +95 1 925 3737
f +95 1 925 3742

INDONESIA

-

Makes & Partners Law Firm
Menara Batavia, 7th Floor
Jl. KH. Mas Mansyur Kav. 126
Jakarta 10220, Indonesia
t +62 21 574 7181
f +62 21 574 7180
w makeslaw.com

MALAYSIA

-

Foong & Partners
Advocates & Solicitors
13-1, Menara 1MK, Kompleks 1 Mont' Kiara
No 1 Jalan Kiara, Mont' Kiara
50480 Kuala Lumpur, Malaysia
t +60 3 6419 0822
f +60 3 6419 0823
w foongpartners.com

MIDDLE EAST

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Al Aidarous Advocates and Legal Consultants
Abdullah Al Mulla Building, Mezzanine Suite 02
39 Hameem Street (side street of Al Murroor Street)
Al Nahyan Camp Area
P.O. Box No. 71284
Abu Dhabi, UAE
t +971 2 6439 222
f +971 2 6349 229
w aidarous.com

-

Al Aidarous Advocates and Legal Consultants
Oberoi Centre, 13th Floor, Marasi Drive, Business Bay
P.O. Box No. 33299
Dubai, UAE
t +971 4 2828 000
f +971 4 2828 011

PHILIPPINES

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ZGLaw
27/F 88 Corporate Center
141 Sedeño Street, Salcedo Village
Makati City 1227, Philippines
t +63 2 889 6060
f +63 2 889 6066
w zglaw.com/~zglaw

wongpartnership.com