

Legal Update

Can an employer rely on a long notice clause to recover years of PILON?

Poten & Partners Pte Ltd v Lee Won Sang [2026] SGHC 208

15 October 2026

The central issue in *Poten & Partners Pte Ltd v Lee Won Sang* [2026] SGHC 208 was whether cl 10.1 of the employment contract entitled the employer to treat the employee's notice period as the whole unexpired balance of a four-and-a-half-year "Initial Period" and thereby recover more than S\$1.7 million as payment in lieu of notice ("**PILON**").

The relevant clause is as follows:

"10.1 To terminate this Contract either party must give at least six months' notice to the other in writing, such notice not to expire prior to the last day of the Initial Period. You must give such written notice to your Manager who will inform the Managing Director."

The High Court rejected that argument. It held that cl 10.1 did not provide an operative notice provision for resignation during most of the Initial Period, so the Employment Act supplied the notice period instead. That meant the employer could recover PILON only for the statutory four-week notice period, not for the balance of the Initial Period. The court also held, obiter, that if the employer's interpretation of cl 10.1 had been correct, the clause would have operated as an unenforceable penalty.



Brief facts and procedural context

The defendant, Mr Lee Won Sang ("**Mr Lee**"), began working for Poten & Partners Pte Ltd ("**Poten**") on 2 November 2017. His employment contracts contained a fixed Initial Period and allowed resignation by notice only if the notice expired after the Initial Period. When one Initial Period was approaching expiry, Mr Lee and Poten entered into a new contract containing materially similar provisions. The subject contract was the third in the sequence.

Mr Lee resigned by e-mail on 4 April 2025 about 6 months into the latest "Initial Period". Poten argued that the employment was to continue for an "Initial Period" up to and including 15 May 2029. Pursuant to clause 10.1 Mr Lee's notice period ran from 4 April 2025 to 15 May 2029, being four years, one month and 12 days, and claimed S\$1,737,433.79 as PILON.

Mr Lee argued that cl 10.1 was properly understood as a six-month notice clause and that Poten's interpretation rendered the six-month wording otiose; alternatively, he contended that Poten's interpretation made the clause penal.



Clause 10.1 did not determine the notice period during most of the Initial Period

The court approached the issue through s 10(2) of the Employment Act, which provides that the length of notice is to be determined by any contractual notice provision, or in the absence of such a provision, by the statutory default periods in s 10(3).

The question, therefore, was whether cl 10.1 in fact determined the notice period for a resignation in April 2025. The court held that it did not. The judge considered that cl 10.1, read with the Initial Period provision, made the six-month notice wording “inoperative for almost the entire Initial Period” because notice could not expire before 15 May 2029. For the notice period to actually be six months, notice would have to start on or after 15 November 2028. On that analysis, the contract did not contain a provision determining the length of notice for resignation more than six months before the end of the Initial Period.

In substance, the judge held, cl 10.1 did not provide a notice period for resignation during the substantial part of the Initial Period; it effectively required the employee to remain employed until the end of that period unless resignation occurred in its final six months.



The Employment Act supplied the notice period and limited the PILON claim

Once the court found that cl 10.1 did not supply an operative notice period for a resignation during most of the Initial Period, the statutory default rule in s 10(3) applied and the notice period was 4 weeks. Notably, the court did not follow Mr Lee’s submission of a 6 months notice.



On Poten’s interpretation, clause 10.1 would have been penal

The court then addressed, for completeness, the argument that Poten’s interpretation of cl 10.1 would amount to a penalty. These observations were obiter because the court had already rejected Poten’s construction of the clause.

The court held that on Poten’s interpretation, cl 10.1 gave rise in substance to a secondary obligation. If Mr Lee wished to terminate his employment on 4 April 2025 and did not work until 15 May 2029, he would be liable to pay S\$1,737,433.79 as PILON.

On that approach, the court considered there to be no material distinction in substance between Poten’s interpretation and the clause considered in *Kelington Engineering (S) Pte Ltd v Gan Cheng Chuan* [2022] 5 SLR 614, where an employee was required to compensate the employer by an amount equivalent to salary for the balance of a fixed term. In both cases, the financial consequence was triggered by the employee’s failure to perform for a stipulated period and quantified by reference to remuneration that would have accrued over that period.

The court further held that the claimed sum of S\$1,737,433.79 did not represent a genuine pre-estimate of likely loss. It was calculated by reference to salary and the remaining period to 15 May 2029, without accounting for the time reasonably required to replace Mr Lee, Poten’s ability to mitigate, or fluctuations in the LPG market. There was therefore no sufficient relationship between the amount claimed and the loss Poten could reasonably have expected from Mr Lee’s premature departure.

On that footing, the court stated that even if Poten’s interpretation had been correct, cl 10.1 would have operated as an unenforceable penalty.



Practical implications

This decision shows that a termination clause framed as requiring “at least six months’ notice” but preventing notice from expiring before the end of a long initial period may fail to operate as a true notice provision during that period. Where that happens, the Employment Act may supply the notice period instead, sharply limiting the employer’s PILON recovery. The judgment also indicates that an attempt to use PILON to recover remuneration for the balance of a long minimum term may be

vulnerable to the penalty doctrine if the sum is tied to salary over the remaining period rather than a genuine pre-estimate of loss.

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