

19 December 2016

Case Update: *Georgetown City Hotel Sdn Bhd v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar dan Restoran, Semenanjung Malaysia* (Award No 1326 of 2016)

The Industrial Court recently followed the decision of the High Court in *Crystal Crown Hotel & Resort Sdn Bhd (Crystal Crown Hotel Petaling Jaya) v Kesatuan Kebangsaan Pekerja-Pekerja Hotel, Bar & Restoran Semenanjung Malaysia*, by concluding that hotels could not convert a portion of the employees' service charge to form part of the minimum wages.

Georgetown City Hotel Sdn Bhd ("the hotel") imposed a service charge on its customers. According to the fifth collective agreement between the hotel and its employees ("the union"), the hotel was required to distribute 90% of the total service charge imposed on monthly bills to all employees, save for certain categories of workers.

With effect from 1 October 2013, the hotel was required to implement the Minimum Wages Order 2012 ("the MWO 2012"), which fixed the minimum wage at RM900. Following several discussions that were inconclusive, the hotel unilaterally restructured the wages of its employees by incorporating a portion of the service charge into the employees' wages to ensure that they received the minimum wage of RM900.

One of the arguments that the hotel relied on was that it had adhered to the Guidelines on the Implementation of the Minimum Wages Order 2012 ("the Guidelines"), which provide that an employer may restructure part of the service charge to form part of the minimum wages (see [Illustration 6](#)). The union, however, argued that the Guidelines were not binding and, further, did not promote the purpose of the National Wages Consultative Council Act 2011.

In short, the Industrial Court dismissed the hotel's implementation of the minimum wages by utilising the employees' service charge. This position may not necessarily remain for long, as the High Court's decision in the *Crystal Crown* case has been appealed against at the Court of Appeal.

The full Award of the Industrial Court may be viewed [here](#).

NB: The MWO 2012 has been revoked by the [Minimum Wages Order 2016](#).

Sebastian Tay Hanxin

This e-Law Alert is brought to you by the Employment Practice Group. The practice group consists of experienced lawyers who are a single source of reference for comprehensive services relating to labour, employment and industrial relations practices. The team's services include advisory and litigation work pertaining to compliance with employment-related legislation, management of transition and migration of staff, management of issues involving dismissals and terminations, employment rights and duties, employment policies, documentation and issues arising from the exercise of an employer's managerial prerogatives in the employment relationship, and trade unions, trade disputes and collective agreements.

If you have any queries, please do not hesitate to contact the Employment team:

Lim Heng Seng
Partner
DID: +603 2170 5861
Fax: +603 2161 3933/1661
Email: lhs@lh-ag.com

Dato' Thavalingam C Thavarajah
Partner
DID: +603 2170 5857
Fax: +603 2161 3933/1661
Email: tt@lh-ag.com

Fara Nadia binti Hashim
Senior Associate
DID: +603 2170 5922
Fax: +603 2161 3933/1661
Email: fnh@lh-ag.com

Shariffullah bin Abdul Majeed
Senior Associate
DID: +603 2170 5881
Fax: +603 2161 3933/1661
Email: sha@lh-ag.com

Amardeep Singh Toor a/l Amar Singh
Associate
DID: +603 2170 5878
Fax: +603 2161 3933/1661
Email: ast@lh-ag.com

Rayna Jayant Gandhi
Associate
DID: +603 2170 5219
Fax: +603 2161 3933/1661
Email: rjg@lh-ag.com

Sebastian Tay Hanxin
Associate
DID: +603 2170 5814
Fax: +603 2161 3933/1661
Email: thx@lh-ag.com

Sharan Kaur Gill
Associate
DID: +603 2170 5916
Fax: +603 2161 3933/1661
Email: skg@lh-ag.com

Tan Hooi Ping
Associate
DID: +603 2170 5947
Fax: +603 2161 3933/1661
Email: hpt@lh-ag.com



*Published by the Employment Practice Group
© Lee Hishammuddin Allen & Gledhill. All rights reserved. The views and opinions attributable to the authors or editor of this publication are not to be imputed to the firm, Lee Hishammuddin Allen & Gledhill. The contents of this publication are intended for purposes of general information and academic discussion only. It should not be construed as legal advice or legal opinion on any fact or circumstance.*