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1 Terms and Conditions of Employment

1.1 What are the main sources of employment law?

The key legislation governing employment law in Singapore is contained in the Employment Act (Cap. 91) ("EA"). Other important statutes include the Child Development Co-Savings Act (Cap. 38A) ("CDCA"), the Retirement and Re-employment Act (Cap. 274A) ("RRA"), the Trade Unions Act (Cap. 333), the Industrial Relations Act (Cap. 136) ("IRA"), the Workplace Safety and Health Act (Cap. 354A), the Work Injury Compensation Act (Cap. 354) ("WICA"), the Employment of Foreign Manpower Act (Cap. 91A), the Central Provident Fund Act (Cap. 36), and the Personal Data Protection Act 2012 ("PDPA").

The common law may also apply in various situations.

Finally, the Ministry of Manpower ("MOM"), together with its tripartite partners, the National Trades Union Congress ("NTUC") and the Singapore National Employers Federation ("SNEF"), has issued various guidelines and advisories relating to employment. While these guidelines and advisories are not legally binding, MOM may take steps against employers who do not comply with certain guidelines or advisories.

1.2 What types of worker are protected by employment law? How are different types of worker distinguished?

The EA covers every employee (regardless of nationality) who is under a contract of service with an employer, except:

- any person employed in a managerial or executive position who earns a basic monthly salary of more than S$4,500;
- any seafarer;
- any domestic worker; or
- any person employed by a Statutory Board or the Government.

For convenience, we refer to employees covered by the EA as "EA Employees"; employees in managerial or executive positions (regardless of salary) as "Executive Employees" and employees not covered by the EA as "non-EA Employees".

However, Part IV of the EA, which provides for rest days, hours of work and other conditions of service, applies only to:

- workmen earning basic monthly salaries of not more than S$4,500; and
- employees (other than workmen) covered under the EA earning basic monthly salaries of not more than S$2,500.

While the EA does not expressly define being "employed in a managerial or executive position", MOM has noted that it generally refers to employees with executive or supervisory functions. These functions include the authority to influence or make decisions on issues such as recruitment, discipline, termination of employment, assessment of performance and reward, or involvement in formulating strategies and policies of the enterprise, or the management and running of the business. Professionals with tertiary education and specialised knowledge/skills and whose employment terms are comparable to those of managers and executives are also considered to be Executive Employees.

1.3 Do contracts of employment have to be in writing? If not, do employees have to be provided with specific information in writing?

Generally, there is no requirement for employment contracts to be in writing. However, the employment contracts of part-time employees (i.e. employees who work for less than 35 hours a week), must specify their hourly basic rate of pay, number of working hours and number of working days, amongst others.

The non-binding Tripartite Guidelines on Issuance of Key Employment Terms in Writing state that employers should provide employees who work continuously for at least 14 days with key employment terms in writing.

1.4 Are any terms implied into contracts of employment?

The various legislative instruments imply specific terms into contracts of employment, as detailed in the other responses to this questionnaire.

Additionally, the Singapore courts have implied certain terms into employment contracts, including:

- an implied duty of mutual trust and confidence between the employer and employee. This includes requirements to act honestly and faithfully, to redress complaints of discrimination or provide a grievance procedure, not to unilaterally and unreasonably vary employment terms, and not to suspend an employee for disciplinary purposes without proper and reasonable cause; and
- an implied duty on employees to exercise reasonable skill and knowledge, care and diligence in the course of carrying out their work (see *Lee Siew Chun v Sourgrapes Packaging Products Trading Pte Ltd* [1992] 3 SLR(R) 855).

1.5 Are any minimum employment terms and conditions set down by law that employers have to observe?

Yes. Some key minimum employment terms and conditions, as contained in the EA, include the following:

- paid public holidays;
- paid sick leave;
- payment period for salaries; and
- items that may be deducted from salaries.

Part IV of the EA, which applies only to certain employees (see question 1.2) also sets various minimum standards, including:

- a maximum of 8 hours a day or 44 hours a week of contractual working hours for non-shift workers;
- overtime allowance for work done over these contractual working hours;
- 1 rest day per week; and
- annual leave of up to 14 days.

1.6 To what extent are terms and conditions of employment agreed through collective bargaining? Does bargaining usually take place at company or industry level?

NTUC, which is a federation of trade unions, states that it represents over 500,000 workers in Singapore. The terms and conditions of employment of eligible employees may be agreed through collective bargaining by the employees' trade unions. Collective agreements are typically entered into at the company level.

2 Employee Representation and Industrial Relations

2.1 What are the rules relating to trade union recognition?

A trade union must be formally recognised by the employer before it can represent its members in collective bargaining. To become recognised, the trade union must first serve the employer with a claim for recognition. If the employer refuses to recognise the trade union, the Commissioner may call for a secret ballot amongst the employees who are entitled to vote. If the results of the secret ballot show that the majority of the employees entitled to vote are members of a particular trade union of employees, the employer is required to recognise the trade union.

2.2 What rights do trade unions have?

Under the IRA, recognised trade unions may represent their members in collective bargaining on industrial matters (e.g. pertaining to terms of employment, conditions of work and transfer of employment) by inviting the employer to negotiate for a collective agreement. If the employer refuses to negotiate, or if both sides fail to reach a collective agreement, a third party conciliator may step in to resolve the deadlock amicably. If the conciliation process fails, the trade dispute may be referred to the Industrial Arbitration Court ("IAC") for arbitration.

However, the following matters may not be the subject of trade union collective negotiations:

- employee promotions;
- internal transfers, provided such transfers are not detrimental to the transferred employees' terms of employment;
- hiring decisions;
- retrenchment by reason of redundancy or company reorganisation;
- the dismissal and reinstatement of an employee, in circumstances where the employee had considered that he was dismissed without just cause or excuse by the employer; and
- the assignment or allocation of duties to an employee that are consistent or compatible with the employee's terms of employment.

A recognised trade union may also represent any Executive Employee individually for certain specified purposes, such as disputes relating to the retrenchment benefit payable and disputes relating to a breach of an employment contract.

2.3 Are there any rules governing a trade union's right to take industrial action?

A registered trade union is first required to obtain the consent of the majority of the members who would be affected, by holding a secret ballot, before commencing, promoting, organising or financing any strike or industrial action.

Industrial actions are unlawful if they are:

- in support of a trade dispute that does not involve the workers taking part in the industrial action;
- in support of a trade dispute that the Industrial Arbitration Court has cognisance of; or
- designed to coerce the government by inflicting hardship on the community.

The Trade Disputes Act (Cap. 331) also specifies various limitations to industrial action that involve intimidation, picketing and contractual breaches that are liable to injure persons or property.

Further, employees working in water, gas and electricity services are prohibited from going on strike, while employees in other specified essential services (e.g. banking, telecommunications, health services, public transport, etc.) are required to give at least 14 days' notice to their employer of their intention before going on strike.

2.4 Are employers required to set up works councils? If so, what are the main rights and responsibilities of such bodies? How are works council representatives chosen/appointed?

There is no requirement under Singapore law for employers to set up works councils.

2.5 In what circumstances will a works council have co-determination rights, so that an employer is unable to proceed until it has obtained works council agreement to proposals?

This is not applicable in Singapore.

2.6 How do the rights of trade unions and works councils interact?

This is not applicable in Singapore.

2.7 Are employees entitled to representation at board level?

There is no express legal right under Singapore law for employees to be represented at the board level.

3 Discrimination

3.1 Are employees protected against discrimination? If so, on what grounds is discrimination prohibited?

There is currently no specific standalone anti-discrimination legislation in Singapore.

Several statutes contain prohibitions on various types of discrimination. For example, the RRA prohibits employers from dismissing employees below the age of 62 years on the grounds of age. The EA protects pregnant employees from being dismissed for a period before and after confinement. The IRA makes it an offence for employers to engage in discriminatory hiring practices against trade union members. The Enlistment Act (Cap. 9) generally prohibits employers from dismissing its employees solely or mainly by reason of his being called up for national service. Article 12(2) of the Singapore Constitution also protects Singapore citizens from discrimination on the grounds only of religion, race, descent or place of birth in any law or in the appointment to employment under a public authority.

MOM, together with NTUC and SNEF, have formed the Tripartite Alliance for Fair and Progressive Employment Practices ("TAFEP") to encourage fair and equitable employment practices. TAFEP has issued a number of guidelines under the Fair Consideration Framework, stating that employers should not discriminate based on age, race, gender, religion or marital status, particularly during the advertisement, recruitment and selection process.

While such guidelines do not strictly have the force of law, MOM imposes additional scrutiny on and curtails work pass privileges of firms found to have discriminatory practices.

3.2 What types of discrimination are unlawful and in what circumstances?

Please see question 3.1 for some examples of prohibitions against discrimination.

3.3 Are there any defences to a discrimination claim?

There are no express statutory provisions that specify various defences to a discrimination claim.

3.4 How do employees enforce their discrimination rights? Can employers settle claims before or after they are initiated?

Under the Fair Consideration Framework, employees who encounter workplace discrimination may raise the issue with TAFEP, which will then work with the employer to improve its employment practices. If the employer is recalcitrant, unresponsive, or persistently fails to improve, TAFEP may refer the case to MOM for further investigation. If MOM determines that the employer has contravened the Tripartite Guidelines on Fair Employment Practices, and the employer still persists in carrying out discriminatory employment practices despite MOM's advice to rectify such practices, MOM will curtail the employer's work pass privileges. MOM has also previously required some offending employers to put up public apologies.

The various statutory provisions relating to discrimination also set out enforcement channels. For example, employees may lodge a claim or complaint directly with MOM if the discriminatory practice constitutes a breach of the EA. Employees who have been unlawfully dismissed on grounds of age may also notify the Commissioner for Labour in writing, and make representations in writing to the Minister.

In addition, it may also be possible for employees to commence a civil claim in court if the applicable laws provide for this. In such cases, employers may settle the claims with employees at any stage of the proceedings.

3.5 What remedies are available to employees in successful discrimination claims?

Employee remedies are typically in the form of reinstatement, or compensation for lost wages, and would depend on the statute that the claim is made under. For example, under the RRA, employees dismissed on the grounds of age may request to be reinstated in their former employment, and be entitled to further compensation for the salary that they would have earned had they not been unlawfully dismissed (section 8 RRA).

The Fair Consideration Framework does not expressly provide for remedies for the employees, although MOM has stated that non-compliant employers would face consequences such as work pass curtailments and additional scrutiny.

3.6 Do "atypical" workers (such as those working part-time, on a fixed-term contract or as a temporary agency worker) have any additional protection?

There is no specific legislation that provides part-time, fixed-term or temporary workers with additional protection against discrimination.

4 Maternity and Family Leave Rights

4.1 How long does maternity leave last?

Where the child is a Singapore citizen, the child's parents are lawfully married, and the mother has been in service of her employer for at least 3 months before the child's birth, she is entitled under the CDCA to 16 weeks' paid maternity leave, which can comprise 4 weeks immediately before, and 12 weeks immediately after delivery. Where she and her employer agree, the employee can take the last 8 weeks of maternity leave flexibly over a 12-month period from the child's birth.

Separately, if a female employee does not qualify for maternity leave under the CDCA, section 76 of the EA entitles all female EA employees not covered under the CDCA to 12 weeks of maternity leave. The last 4 weeks of maternity leave can be taken flexibly over a 12-month period from the child's birth.

4.2 What rights, including rights to pay and benefits, does a woman have during maternity leave?

The CDCA entitles a woman on maternity leave to receive payment from her employer at her gross rate of pay for her 16 weeks of maternity leave.

Under the EA, an employer must pay the employee for the first 8 weeks of maternity leave if she has fewer than 2 living children (excluding the newborn), and if she has served her employer for at least 3 months before the birth of the child.

An employer must not dismiss an employee on maternity leave, whether under the CDCA or the EA. Additionally, should an

employer dismiss a pregnant EA Employee who has been employed for at least 3 months, she would still be entitled to all maternity benefit payments that she would otherwise be eligible for under the EA.

4.3 What rights does a woman have upon her return to work from maternity leave?

An employee is entitled to 6 days of unpaid infant care leave per year if his/her child is a Singapore citizen below 2 years old and the parent has served his/her employer for at least 3 months.

An employee is entitled to 6 days of paid childcare leave per year if his/her child is a Singapore citizen below the age of 7, and if the parent has served his/ her employer for at least 3 months.

Where a child is a Singapore citizen between the ages of 7 and 12 years, each parent who has served his/her employer for more than 3 months is entitled to 2 days of paid extended childcare leave.

For parents with children in both age groups (i.e. those below 7 years of age, as well as those between the ages of 7 and 12 years), the total paid childcare leave for each parent is a maximum of 6 days per year.

If an EA Employee does not qualify for the above childcare leave benefits under the CDCA, the EA also provides for childcare leave. If the EA Employee has children below 7 years of age, and has served his/her employer for at least 3 months, that employee is entitled to 2 days of childcare leave per year. The employee may take up to a maximum of 14 days of childcare leave for any one child.

For completeness, we note that an employer cannot employ an EA Employee at any time during the 4 weeks immediately following her confinement.

4.4 Do fathers have the right to take paternity leave?

Yes. A working father of a Singapore citizen born from 1 May 2013 onwards, who is lawfully married to the child's mother, and who has served his employer for at least 3 months before the child's birth, is entitled to paternity leave for 1 week for each birth.

Working fathers are entitled to share 1 week out of the mother's 16 weeks' maternity leave under the CDCA, subject to the mother's agreement.

4.5 Are there any other parental leave rights that employers have to observe?

The CDCA also provides for adoption leave. A female employee who has served her employer for at least 3 months is entitled to paid adoption leave for 4 weeks on the adoption of a child under the age of 1, provided she meets certain criteria, including Singapore citizenship of the child. Where the adoptive father is lawfully married to the adoptive mother, the adoptive father may also be entitled to 1 week's paid paternity leave.

4.6 Are employees entitled to work flexibly if they have responsibility for caring for dependants?

Employees are not strictly entitled to work flexibly if they have responsibility for caring for dependants. However, the Tripartite Guidelines on Best Work-Life Practices encourages employers to ensure that all employees are eligible to be considered for available Flexible Work Arrangements ("FWAs"), keeping in mind that some jobs are unsuitable for certain FWAs.

5 Business Sales

5.1 On a business sale (either a share sale or asset transfer) do employees automatically transfer to the buyer?

The EA provides for the automatic transfer of EA Employees from the transferor to the transferee when an undertaking (or part thereof) is transferred. Such transfer includes the disposition of a business as a going concern and a transfer effected by sale, amalgamation, merger, reconstruction or operation of law.

Non-EA Employees would not be automatically transferred to the buyer in the event of a business sale.

5.2 What employee rights transfer on a business sale? How does a business sale affect collective agreements?

On the transfer of the employment, the terms and conditions of employment and the period of employment with the transferor will continue and be preserved under the employee's employment with the transferee. However, the transferee and the employee are free to agree to different terms of employment.

Further, the transferee takes over from the transferor all rights, powers, duties and liability which accrued before the transfer under any transferred employment contract. The employee may therefore have recourse against the transferee for any breach that was committed by the transferor pre-transfer.

Any collective agreement entered into between the transferor and the trade unions of the transferred employees, and is in force immediately before the transfer, will continue in force until the later of: (i) 18 months after the transfer; and (ii) until the collective agreement expires. The transferee will be deemed to have recognised a trade union previously recognised by the transferor if (i) the majority of the transferee's employees are members of the trade union post-transfer, or (ii) the trade unions would be representing employees on any disputes arising from the transfer of employment. In other cases, while the collective agreement remains in force, a pre-transfer trade union will be deemed to be recognised by the transferee only for the purpose of representing the employees in any dispute arising from such collective agreements or from the employment transfer.

5.3 Are there any information and consultation rights on a business sale? How long does the process typically take and what are the sanctions for failing to inform and consult?

Under the EA, transferred employees are given the opportunity to consult with the transferor employer. To enable such consultations to take place, the transferor employer is required under the EA to notify EA Employees and their respective trade unions of the approximate date and reason for the transfer, the implications of the transfer, and the measures that the transferor and the transferee envisage they will take in connection with the transfer. The transferee is required to supply the transferor with such information as to enable the latter to comply with its notification obligations.

The transferor employer and the transferee are required to make the notifications as soon as it is reasonable, and in any case, before the asset transfer. The Commissioner is empowered to direct the transferor and transferee to comply with this obligation within a specified period of time, if it considers that there has been an inordinate delay.

Where non-EA Employees are to be transferred, they should typically be notified at least in accordance with the termination notice provisions in their employment contracts.

5.4 Can employees be dismissed in connection with a business sale?

The EA does not expressly prohibit employers from dismissing employees in the course of a business sale. Transferors and transferees who intend to dismiss such employees, whether before or after the transfer, should ensure that they comply with the laws relating to termination. Please see question 6.5 for more details in this regard.

5.5 Are employers free to change terms and conditions of employment in connection with a business sale?

Please see question 5.2.

6 Termination of Employment

6.1 Do employees have to be given notice of termination of their employment? How is the notice period determined?

Employers and employees may contractually agree on the applicable notice period for termination of employment. For EA Employees, the length of the notice period has to be the same for both the employer and employee, and in the absence of agreement between employer and employee, the notice periods set out in the EA would apply.

Employers may also terminate EA employees immediately by paying them salary *in lieu* of notice.

While there is no strict statutory requirement for employers to provide the same for non-EA Employees, it is industry practice for employment agreements to provide for termination by notice or salary *in lieu* of notice.

6.2 Can employers require employees to serve a period of "garden leave" during their notice period when the employee remains employed but does not have to attend for work?

Yes, subject to certain common law considerations, employees may generally be placed on garden leave during their notice period, even if the employment agreement does not expressly provide for the same.

6.3 What protection do employees have against dismissal? In what circumstances is an employee treated as being dismissed? Is consent from a third party required before an employer can dismiss?

When dismissing an EA Employee on grounds of misconduct, employers must first conduct due inquiry into the misconduct.

The EA also allows specific classes of employees to make representations in writing to the Minister to be reinstated to their former employment, should they consider their dismissal to be without just cause or excuse. This recourse is available whether the employee is terminated with notice or salary *in lieu* of notice, or is summarily dismissed. A similar remedy is available under section 35 of the IRA for unionised employees. Further, various statutory provisions also protect certain classes of employees from being dismissed (e.g. pregnant employees and elderly employees – see question 3.1 for details).

An employee may be treated as being dismissed if the employee has expressly indicated that his employment is being terminated. Further, if the employer has engaged in a repudiatory breach of the employment contract, the employee is entitled to treat himself as being constructively dismissed, and may walk away from obligations under the employment contract.

Generally, there is no requirement for third parties to give consent before an employer is entitled to dismiss an employee.

6.4 Are there any categories of employees who enjoy special protection against dismissal?

Yes, various statutory provisions impose certain limitations on the employer's right to dismiss certain classes of employees, for example, pregnant employees and elderly employees (see question 3.1 for details).

6.5 When will an employer be entitled to dismiss for: 1) reasons related to the individual employee; or 2) business related reasons? Are employees entitled to compensation on dismissal and if so how is compensation calculated?

Generally, an employer may dismiss an employee in accordance with the necessary notice periods or salary *in lieu* of such notice, whether for reasons related to the individual employee, or for business-related reasons.

Dismissal for individual reasons

Further, an employer may terminate an employee's contract without notice or salary *in lieu* of notice (i.e. summary dismissal) if he has sufficient cause to do so, for example, if the employee's misconduct was so serious that it strikes at the root of the contract. It also remains open for the employer to specify in the employment contract various situations which may result in the employee's summary dismissal. Summary dismissal without cause would amount to wrongful dismissal if the employer does not provide the necessary notice or salary *in lieu* of notice.

The EA also allows employers to summarily dismiss EA Employees for misconduct or wilful breach of any condition of the employment contract.

Dismissal for business reasons

There are no specific provisions governing the termination of employees due to business-related reasons. However, if an employee is dismissed in circumstances where a redundancy results, and that employee would be entitled to redundancy payments were he retrenched on account of redundancy, a presumption arises that the dismissal is on the grounds of redundancy.

Retrenchment benefits

There is no statutory requirement for employers to compensate employees who have been retrenched – any retrenchment benefits are to be agreed between the employer and employee. The Tripartite Guidelines on Managing Excess Manpower notes that the prevailing norm is to pay retrenchment benefits of between 2 weeks to 1 month's salary per year of service, depending on the financial position of the company.

However, when dealing with unionised employees, employers are obliged to negotiate in good faith with the union, and may not have absolute discretion to determine the terms of the retrenchment

benefits. In the event of a dispute, the IAC may make an award for retrenchment benefits to be paid, even if retrenchment benefits had not previously been contractually provided for.

From 1 April 2015 onwards, employees covered under Part IV of the EA will not be entitled to retrenchment benefits (even where their contract provides for such benefits) if they have worked for less than 2 years with their employer.

6.6 Are there any specific procedures that an employer has to follow in relation to individual dismissals?

When dismissing an EA Employee for misconduct, the EA requires employers to first conduct due inquiry into the misconduct. While there is no prescribed procedure for conducting the inquiry, MOM has noted that the person hearing the inquiry should not be in a position which may suggest bias, and the employee being investigated should have the opportunity to present his case.

In the case of non-EA Employees, apart from those set out in the employment contract, there are no statutorily prescribed procedures that employers are required to follow before dismissing these employees.

6.7 What claims can an employee bring if he or she is dismissed? What are the remedies for a successful claim?

An employee may bring a claim in court if he has been wrongfully dismissed. The normal measure of damages in cases of wrongful dismissal is the amount which the employee would have received under the employment contract had the employer lawfully terminated the contract by giving the required notice or paying salary *in lieu* of notice, subject to mitigation.

However, in *Wee Kim San Lawrence Bernard v Robinson & Co (Singapore) Pte Ltd* [2014] SGCA 43, the Court of Appeal noted that in cases where the employer's action results in other distinct consequences in addition to wrongful dismissal, for example, psychiatric or other illnesses brought about by the breach, or "stigma" damages that harm the employee's future employment prospects caused by the corrupt manner in which the employer's business had been run, such losses form independent heads of losses that may properly be recovered on top of any notice period damages recoverable from the claim for wrongful dismissal.

Section 14 of the EA also allows specific classes of employees to make representations in writing to the Minister to be reinstated in his former employment. Please see question 6.3 for further details.

6.8 Can employers settle claims before or after they are initiated?

Where the employee has commenced civil proceedings in court, it remains open for the employer to settle the civil claim with the employee, at any stage during the proceedings.

6.9 Does an employer have any additional obligations if it is dismissing a number of employees at the same time?

There are no specific laws governing the mass dismissal of employees. However, employers are advised to notify MOM of any retrenchment exercise that they intend to carry out.

6.10 How do employees enforce their rights in relation to mass dismissals and what are the consequences if an employer fails to comply with its obligations?

Thia is not applicable in Singapore.

7 Protecting Business Interests Following Termination

7.1 What types of restrictive covenants are recognised?

Common types of restrictive covenants that the Singapore courts have recognised include:

- non-compete covenants;
- covenants not to solicit employees; and
- covenants not to solicit business and clients.

The type of covenants that may be enforceable in Singapore is not a closed list, and may differ according to the type of legitimate interest that employers intend to protect.

7.2 When are restrictive covenants enforceable and for what period?

Under Singapore law, restrictive covenants are *prima facie* void unless: (i) there is a legitimate interest that the employer seeks to protect; and (ii) they are reasonable in the interests of the parties and in the interests of the public.

Restrictive covenants should be no wider than necessary to protect the legitimate interests of the employer.

Legitimate Interests

In an employment context, the protection of trade secrets, trade connections, and the maintenance of a stable, trained workforce, have been recognised as legitimate interests that may be protected by restrictive covenants. The list of legitimate interests which can support a restrictive covenant is not closed.

However, where the legitimate interest is already sufficiently protected by another clause in the employment contract, it may not be used to justify the restrictive covenant.

Reasonableness

It may be difficult to provide general benchmarks of what constitutes reasonableness in every case because such an assessment is highly fact-specific, and will change according to the circumstances of each case. For example, in determining the reasonable period of restraint for a non-solicitation of employees covenant, the court in *Lek Gwee Noi v Humming Flowers & Gifts Pte Ltd* [2014] SGHC 64 noted that the conclusion would depend on the particular industry involved, the life cycle of trade connection in that industry, and the role of the departing employee in the employer's business.

However, employers may wish to pay special attention to the following factors when crafting restrictive covenant, as these have been the basis for a finding of unreasonableness in some cases:

- the geographical area of the restraint;
- the period of the restraint;
- whether the restraint extends to other businesses not relevant to the employer's business; and
- whether the restraint has a reasonable connection to the former employee's position and influence (e.g. it may be unreasonable if the employee is prohibited from soliciting customers who became the employer's customers after the termination of employment).

7.3 Do employees have to be provided with financial compensation in return for covenants?

No, employers are not strictly required to provide financial compensation to their employees in order to impose restrictive covenants on them. However, providing substantial post-employment benefits (e.g. as part of a termination agreement which also contains restrictive covenants) may assist the court in finding that these covenants are reasonable.

7.4 How are restrictive covenants enforced?

A breach of a restrictive covenant would constitute a contractual breach, allowing the employer to bring a civil claim for damages in court. Where the employer would not be adequately compensated in damages for a breach of a restrictive covenant, it may also be possible to obtain an injunction.

8 Data Protection and Employee Privacy

8.1 How do employee data protection rights affect the employment relationship?

The PDPA requires organisations to notify the employee of the purposes for which it intends to collect, use or disclose personal data and obtain the consent of the employee for the same. However, some exceptions to this requirement are available, for example, where the collection, use or disclosure of an individual's personal data is: (i) necessary for 'evaluative purposes' (i.e. determining the suitability, eligibility or qualifications of the individual for employment; promotion or continuance in employment; or removal from employment); or (ii) reasonable for managing or terminating the employment relationship.

An employer which has sufficiently provided a general notification to employees on the purposes for which their personal data may be collected, used and disclosed need not notify employees of the same purpose prior to each time that it engages in such activities.

Employers may continue to use personal data collected before 2 July 2014 for the same purposes for which such personal data was collected without obtaining fresh consent, unless the employee has withdrawn his consent for such use or otherwise indicated that he does not consent to such use.

8.2 Do employees have a right to obtain copies of any personal information that is held by their employer?

Yes. Employees may request access to their personal data that is under the employer's possession or control ("access request").

An employer need not provide the requested personal data if it is in respect of one of the exceptions in the Fifth Schedule of the PDPA (e.g. it is opinion data kept solely for an evaluative purpose). In addition, an employer shall not provide access where the provision of such data could reasonably be expected, amongst others, to threaten the safety or health of another individual, cause harm to the safety or health of the requestor, or to reveal personal data about another individual.

8.3 Are employers entitled to carry out pre-employment checks on prospective employees (such as criminal record checks)?

An employer may collect, use or disclose the personal data of a prospective employee for the purposes of carrying out pre-employment checks, if the prospective employee is notified of such a purpose on or before such collection, use or disclosure, and gives his consent for the employer to do so.

Alternatively, if the collection, use or disclosure of personal data for the purpose of conducting pre-employment checks falls within any of the exceptions under the Second, Third or Fourth Schedule to the PDPA (as applicable), or if the information is publicly available, the prospective employee's consent need not be obtained. In particular, the collection, use or disclosure of such personal data may be regarded as necessary for evaluative purposes.

8.4 Are employers entitled to monitor an employee's emails, telephone calls or use of an employer's computer system?

Generally, an employer is entitled to monitor an employee's emails, telephone calls or use of the employer's computer system, insofar as the employee is notified of and consents to the purpose(s) of such collection of his personal data.

Further, it may not be necessary to obtain the employee's consent before such monitoring, if this is for the purpose of managing or terminating an employment relationship, or necessary for any investigation or proceedings.

8.5 Can an employer control an employee's use of social media in or outside the workplace?

The PDPA does not specifically allow or restrict the ability of an employer to control an employee's use of social media in or outside the workplace.

However, the employer may control an employee's use of social media contractually, such as by providing for a social media policy which the employee is bound to abide by under the contract of employment.

Moreover, an employee would remain bound by a number of Singapore laws and regulations in relation to his use of social media, whether in or outside the workplace. These could include, amongst others: the laws of intellectual property and/or confidentiality; defamation; harassment; and internet content regulation.

9 Court Practice and Procedure

9.1 Which courts or tribunals have jurisdiction to hear employment-related complaints and what is their composition?

The State Court and Supreme Court of Singapore retain the jurisdiction to hear all employment-related complaints.

Additionally, the various employment statutes provide other forums for hearing complaints.

If the matter involves a dispute between an EA Employee and his employer or any person liable under the provisions of the EA to pay any salary due to the employee where the dispute arises out of any term in the employment contract between the EA Employee and his employer or out of any provisions of the EA, such disputes may be brought to the Commissioner for inquiry and decision.

Further, specific classes of employees may make representations in writing to the Minister to be reinstated in their former employment, should they feel that their dismissal is without just cause or excuse (see question 6.3 for details).

Should a matter be related to trade disputes, the IAC may have cognisance over such disputes on various grounds set out in section

31 of the IRA. The IAC comprises the President, and a member from the Employer Panel and the Employee Panel selected by the employer and union respectively.

If the employee intends to file a claim under WICA for injuries or diseases due to work, employees are required to notify MOM of the claim, for the Commissioner to assess if the claim is compensable, and if so, the amount of compensation payable.

Finally, certain categories of Executive Employees may also approach MOM for tripartite mediation, provided the dispute involves: (i) salary arrears; (ii) payment of retrenchment benefits; or (iii) breach of individual employment contracts. There is currently no fee for such mediation. Tripartite Mediation Advisors are nominated by the tripartite partners and appointed by MOM.

9.2 What procedure applies to employment-related complaints? Is conciliation mandatory before a complaint can proceed? Does an employee have to pay a fee to submit a claim?

The Rules of Court would generally apply to civil proceedings in the Supreme Court.

In respect of a claim brought by EA Employees to the Commissioner, employees may first contact MOM to discuss the content of the claims. Alternatively, employees may lodge a claim via MOM's Employment Standards Online portal. A registration fee of S$3 is payable by the employee for filing the claim. No prior conciliation process is required. Where the employer has a grievance procedure, employees should generally follow this procedure before referring the case to the IAC.

Before referring a trade dispute to the IAC, the trade union and employer are first required to undergo a process of conciliation. Thereafter, upon receiving the application for arbitration, if the parties agree, the Registrar of IAC will call further meetings to help resolve the dispute amicably through mediation. If no resolution is reached, the Registrar will arrange for the dispute to be heard by the IAC. A fee of S$20 is payable to file a dispute for arbitration before the IAC.

9.3 How long do employment-related complaints typically take to be decided?

In respect of civil claims brought in the courts and claims brought before the Commissioner, the timelines involved in resolving employment-related complaints depend largely on the complexity of the issue involved.

IAC decisions are normally given within 2 weeks of the hearing, and often on the same day.

In respect of WICA claims, a majority of the claims are settled within 3 to 6 months if there are no disputes as to compensation order issued by the Commissioner.

9.4 Is it possible to appeal against a first instance decision and if so how long do such appeals usually take?

Decisions issued by the Commission may be appealed to the High Court within 14 days of the decision.

Decisions issued by the IAC are final and conclusive, and may not be challenged, appealed against, reviewed or called in question in any court.

Commission orders issued under WICA may generally be appealed to the High Court, if a substantial question of law is involved in the appeal, and the amount in dispute is not less than S$1,000.

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Chong Kin leads a strong team of corporate and commercial lawyers that handle all aspects of employment laws in Singapore, including issues relating to personal data protection as well as anti-harassment.

Some of his plaudits include:

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Asia Pacific Legal 500 recommends Benjamin for employment matters, with clients praising him for his "*quick turnaround time*". He is also ranked as a recommended lawyer by Who's Who Legal - Labour and Employment 2014, for the second consecutive year.

Benjamin is also recognised as a leading life sciences lawyer in Who's Who Legal. The Practical Law Company Which Lawyer? also recommends him in the category of Life Sciences: Corporate & Commercial.

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