

**Baker
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Dispute Resolution Annual Legal Update

23 January 2018

The Straits Room, Fullerton Hotel Singapore



**Baker
McKenzie
Wong & Leow.**

Dispute Resolution Annual Legal Update 2018
**Corporate and Commercial
Litigation**

Nandakumar Ponniya

January 2018





Agenda

- 1 Key developments in the law

- 2 Changes to the restructuring and insolvency regime in Singapore



1

Key developments in the law

Corporate wrongs can amount to personal wrongs

Sakae Holdings Ltd v Gryphon Real Estate Investment Corp Pte Ltd and others (Foo Peow Yong Douglas, third party) and another suit [2017] SGHC 73

Facts

Sakae brought an action in minority oppression for the wrongful diversion of monies by way of, inter alia, sham loan and consultancy agreements

Holding

The court found that the execution of sham agreements would amount to oppression because it cannot be within a party's commercial expectations that its joint venture partners would behave in a fraudulent manner.

Using CA s 216 to address corporate wrongs

Leong Chee Kin v Ideal Design Studio Pte Ltd and others [2017] 2 SLR 898

Facts

A minority shareholder brought an action for oppression arising from, inter alia, the other shareholders' decisions to divert business away from the company

Holding

Where there are no uninvolved shareholders, a complainant may use the minority oppression remedy to address corporate wrongs without the need to apply for a derivative action

Limited scope of legitimate expectations

Ong Bee Dee (executor of the estate of Ong Tuan Seng, deceased) v Ong Bee Chew and others [2017] 3 SLR 579

Facts

The executor of an estate filed suit against several of the deceased's family members for wrongfully inducing the transfer of shares to them

Holding

Even if there was a legitimate expectation that the deceased would keep the shares, these expectations are only relevant to the court's just and equitable or oppression jurisdiction under the Companies Act. It is not an independent legal basis for relief, even in a quasi-partnership.

Leave to intervene under CA s 216A

Chong Chin Fook v Soloman Alliance Management Pte Ltd and others and another matter [2017] SGCA 5

Facts

The appellant commenced a lawsuit against a shareholder on behalf of the company. He was then removed as the sole director of the company. He applied to take over direction of this lawsuit pursuant to CA s 216A.

Holding

To intervene in ongoing legal proceedings involving the company, a complainant must only demonstrate that it is probable that the company would not diligently prosecute the action; actual proof of a lack of diligent prosecution is not required.

Reaffirmation of separate legal entity doctrine

Goh Chan Peng and others v Beyonics Technology and another and another [2017] 2 SLR 592

Facts

A holding company sued its ex-director and CEO for wrongfully diverting business away from one of its subsidiaries

Holding

The holding company in a group of companies cannot claim for loss suffered by a subsidiary in the group even if it is in a position to direct and control the application of the cash and profits of its subsidiaries

Rejection of punitive damages in contract

PH Hydraulics & Engineering Pte Ltd v Airtrust (Hong Kong) Ltd and another appeal [2017] 2 SLR 129

Facts

Airtrust sought punitive damages on the basis of “reckless, dishonest and/or fraudulent conduct” of PH Hydraulics

Holding

General rule is that punitive damages cannot be awarded for breach of contract, although “a particularly outrageous type of breach” may necessitate departure from the general rule.

No setting aside of consent order

Turf Club Auto Emporium Pte Ltd and others v Yeo Boong Hua and others and another appeal and other matters" [2017] 2 SLR 12

Facts

Trial judge held that the consent order ought to be set aside as it was inoperative and the defendants had committed repudiatory breaches

Holding

Consent order could not be set aside despite the repudiatory breaches, nor on the ground that it was inoperative

Court did not retain a residual discretion to set aside the consent order

Related parties in schemes of arrangement

SK Engineering & Construction Co Ltd v Conchubar Aromatics and another appeal and another appeal [2017] 2 SLR 898

Facts

A judgment creditor opposed proposed schemes of arrangement because all of the creditors who voted in favour of the scheme were related to the scheme companies

Holding

- a) Whether a creditor is a related creditor is a fact-sensitive analysis.
- b) Votes of creditors related to the scheme should be wholly discounted
- c) Where there are creditors who have obtained their debts by assignment, these assignments must be genuine transactions made at arm's length



2

Changes to the restructuring and insolvency regime in Singapore

Legislative Timeline

2013 ILRC Report

- Insolvency Law Review Committee ("ILRC") appointed December 2010
- ILRC's report issued 4 October 2013
- Broadly accepted by Government 6 May 2014

2016 Committee Report

- Committee to Strengthen Singapore as an International Centre for Debt Restructuring ("Committee") appointed May 2015
- Committee's report published 20 April 2016

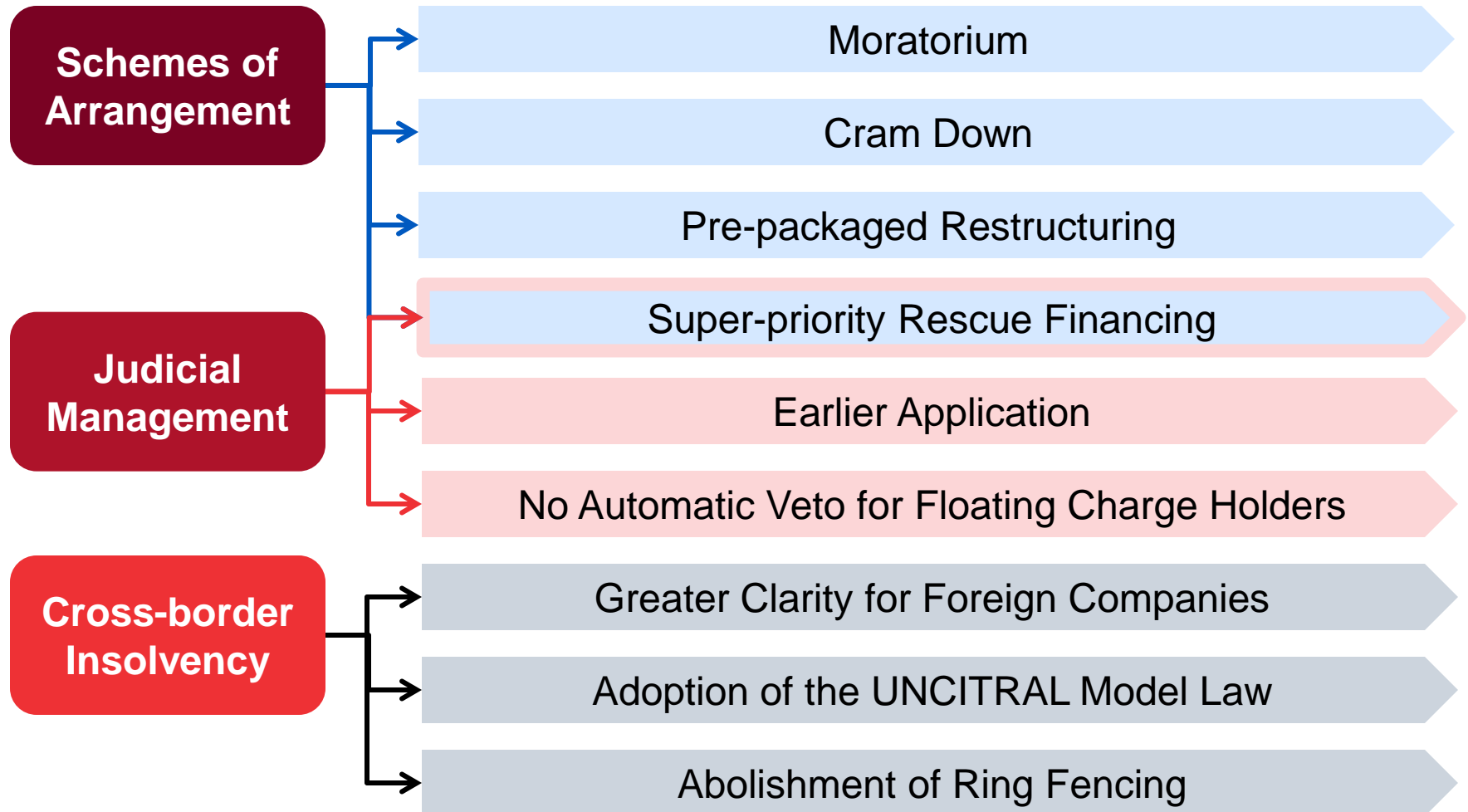
2016 Public Consultation

- Public Consultation on Proposed Amendments to the Companies Act to Strengthen Singapore as an International Centre for Debt Restructuring
- From 21 Oct to 02 Dec 2016

Enactment And Commencement

- Companies (Amendment) Act 2017 passed on 10 March 2017 and assented on 29 March 2017
- Restructuring and insolvency provisions came into force on 23 May 2017

Key Changes



First case on super-priority rescue financing

Re: Attilan Group Ltd [2017] SGHC 283

Facts

Applicant sought leave to convene a meeting of creditors to consider a scheme, and for super priority to be granted under the recently introduced s 211E Companies Act.

Holding

For an application for super priority to be granted:

- 1) Proposed financing must constitute “rescue financing” under s 211E(9) CA;
- 2) Applicant must meet the condition(s) under one of the limbs in s 211E(1);
and
- 3) It must be a case where the court decides to exercise its discretion to grant super priority.

Shift in trends

Universalist approach to cross-border insolvency and restructuring

Foreign companies with sufficient connection to Singapore in distress likely to consider Singapore as R & I jurisdiction of choice

Debtor-friendly reforms could provide development of an Asian DiP finance market derived from the US Model



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Dispute Resolution Annual Legal Update 2018
**Developments In
Arbitration Law**

Leng Sun Chan, SC

January 2018





Agenda

- 1 Update on Third Party Funding regime

- 2 Arbitrability

- 3 Inherent Power to Stay for Case Management

- 4 Challenging Enforcement – Tribunal’s decision on governing law

- 5 Accusations of Bias

A black and white photograph of a spiral-bound notebook with a pen resting on it. A ruler is visible in the top left and bottom right corners. The notebook is open to a blank page. A red banner is overlaid at the bottom of the image.

1

Update on Third Party Funding regime

Update on Third Party Funding regime

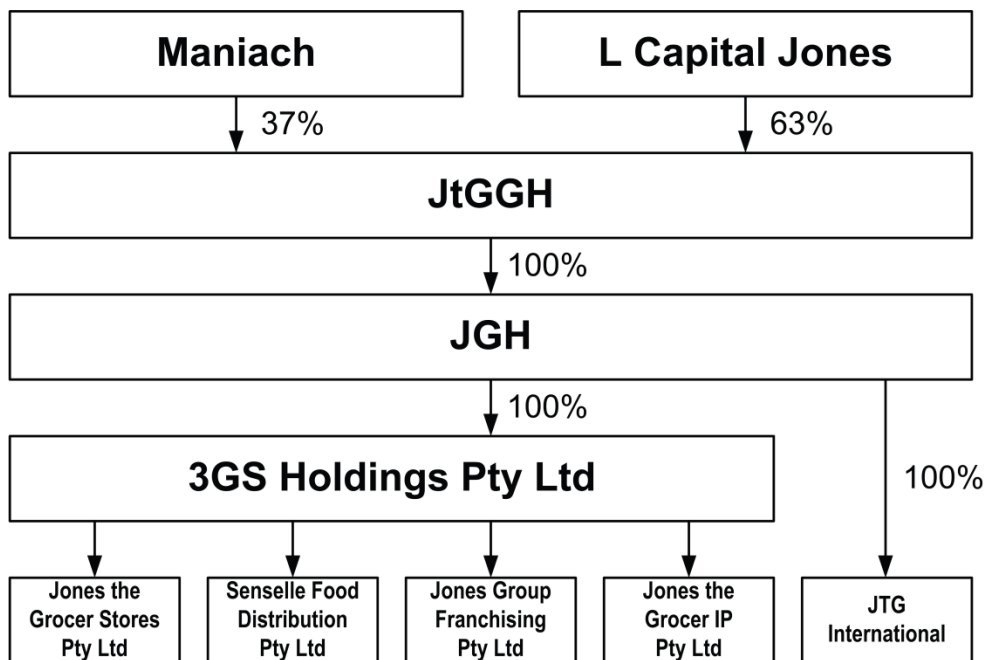
- Civil Law Act
- Civil Law (Third Party) Funding Regulations
- Legal Profession (Professional Conduct) Rules
- SI Arb (Singapore Institute of Arbitrators) Guidelines on Third Party Funding
- SIAC Third Party Funding Practice Note
- Law Society Guidance Note on Third Party Funding

A black and white photograph of a spiral-bound notebook with a pen resting on it. A ruler is visible in the top left and bottom right corners. The notebook is open to a blank page. A red banner is overlaid at the bottom of the image.

2

Arbitrability

L Capital Jones Ltd and another v Maniach Pte Ltd [2017] 1 SLR 312



Shareholder Agreements between founder Manos, Maniach, L Capital Jones and JtGGH provided for arbitration

Maniach commenced oppression of minority shareholder proceedings against L Capital Jones and JtGGH

Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals [2016] 1 SLR 373 ("Tomolugen")

The background of the slide is a grayscale photograph of a workspace. It features a spiral-bound notebook with a silver metal binding on the right side. A black pen lies horizontally across the notebook's pages. In the upper left and lower right corners, a ruler is visible, showing numerical markings. The overall composition is clean and professional, suggesting a focus on organization and management.

3

Inherent Power to Stay for Case Management

Gulf Hibiscus Ltd v Rex International Holding Ltd [2017] SGHC 210

- GHL, RME and Schroder are shareholders in Lime PLC.
- GHL sued RME's parent companies in Singapore Court for conspiracy, unjust enrichment and wrongful interference in actions that should have been taken by Lime PLC
- Shareholder agreement between GHL and subsidiary of Defendants, RME and others provided for arbitration.
- Aedit Abdullah JC – stay under inherent jurisdiction but arbitration mechanism (tiered clause) under SHA must be triggered within 3 months.



4

Challenging Enforcement – Tribunal's decision on governing law

Quanzhou Shanhong Trading v ADM Asia-Pacific Trading [2017] SGHC 199

Plaintiff agreed to buy corn from Defendant. Dispute referred to CIETAC Beijing for arbitration. Award for the Plaintiff, who sought enforcement in Singapore. Tribunal had decided that one part of the contract was governed by English law and another part governed by Chinese law. Defendant argued that an error by the Tribunal on the governing law is an error in excess of its jurisdiction, that it disregarded the parties' express agreement as to the governing law.

Challenge failed. No excess of jurisdiction just because a tribunal comes to a wrong conclusion on an issue that was within the scope of the submission to arbitration, within its jurisdiction to decide.

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5

Accusations of Bias

Prometheus Marine Pte Ltd v King, Ann Rita [2017] SGCA 61

- King contracted to buy yacht from Prometheus. Contract provided for Singapore law, SIAC arbitration. Yacht damaged before delivery and could not be satisfactorily repaired. King commenced arbitration for refund and damages. Arbitrator – state that Singapore law governed the contract and the arbitration but did not say whether IAA or AA. Award for King.
- Prometheus filed 2 applications to High Court to set aside award, under AA and IAA. Alleged arbitrator exceeded jurisdiction, breached natural justice, was biased and award breached natural justice because arbitrator failed to determine lex arbitri and made erroneous findings. Also alleged fraud or corruption in making of award because King lied about her residence.
- Judge dismissed applications.
- Prometheus appealed, also alleged Judge biased. After filing the appeal, Prometheus also filed CA Summonses to set aside Judge's decision for apparent bias.
- Appeals dismissed. CA Summonses dismissed. Lawyer personally pay S\$10,000 out of S\$55,000 costs awarded against Prometheus.



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Panel Discussion: Innovation in Dispute Resolution

Moderator:

Richard Allen

Panelists:

- **Owen M. Hawkes (KPMG)**
- **Sebastian Ko (Epiq)**
- **Wai Ming Lau (Accenture)**



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Dispute Resolution Annual Legal Update 2018
Employment Litigation

Zeming Liu

January 2018





Agenda

- 1 Duty of care in providing references

- 2 Definition of 'Due Inquiry'

- 3 The Employment Claims Tribunal

- 4 Work pass applications

- 5 New Tripartite Standards

- 6 Updates to MOM regulations



1

Duty of care in providing references

Providing References

Man awarded \$4m after bad reference cost him new job



Mr Ramesh Krishnan, who has been working at a vegetarian cafe, lost his defamation suit against former employer AXA in the High Court in 2015, but the Court of Appeal later ruled that AXA had breached its duty of care to him. The High Court's award of \$4.026 million was for loss of earnings from the negligence on the part of AXA in preparing the reference. ST PHOTO: ONG WEE JIN

🕒 PUBLISHED AUG 15, 2017, 5:00 AM SGT

Ramesh v. AXA Life Insurance Singapore Pte Ltd

AXA provided references about an ex-employee which portrayed him adversely, and which suggested poor performance and possible disciplinary, compliance issues etc.

Potential employers declined to hire him

Holding:

AXA had breached the standard of care it owed to the ex-employee as the information it had provided was incomplete, giving rise to an adverse inference against him

Employers owe employees a duty of care when providing a performance reference – the facts stated must be true, and any opinions expressed must be supported by facts

The High Court awarded the ex-employee S\$4 million in damages



2

The definition of 'Due Inquiry'

Long Kim Wing v LTX-Credence Singapore Pte Ltd

The employee was accused of the following misconduct:

- Involvement in the forgery of an employment offer letter
- Failure to obtain prior approval to make payments to colleagues

The employee was summarily dismissed without notice.

The employee claimed that the employer failed to undertake due inquiry, as required under the terms of employment.

Holding:

In order to satisfy the requirement of conducting 'due inquiry' , the employer should:

- Clearly inform the employee of all the allegations and evidence against him/her
- Allow the employee to present his case



3

The Employment Claims Tribunal

The Employment Claims Act 2016

The Employment Claims Tribunal

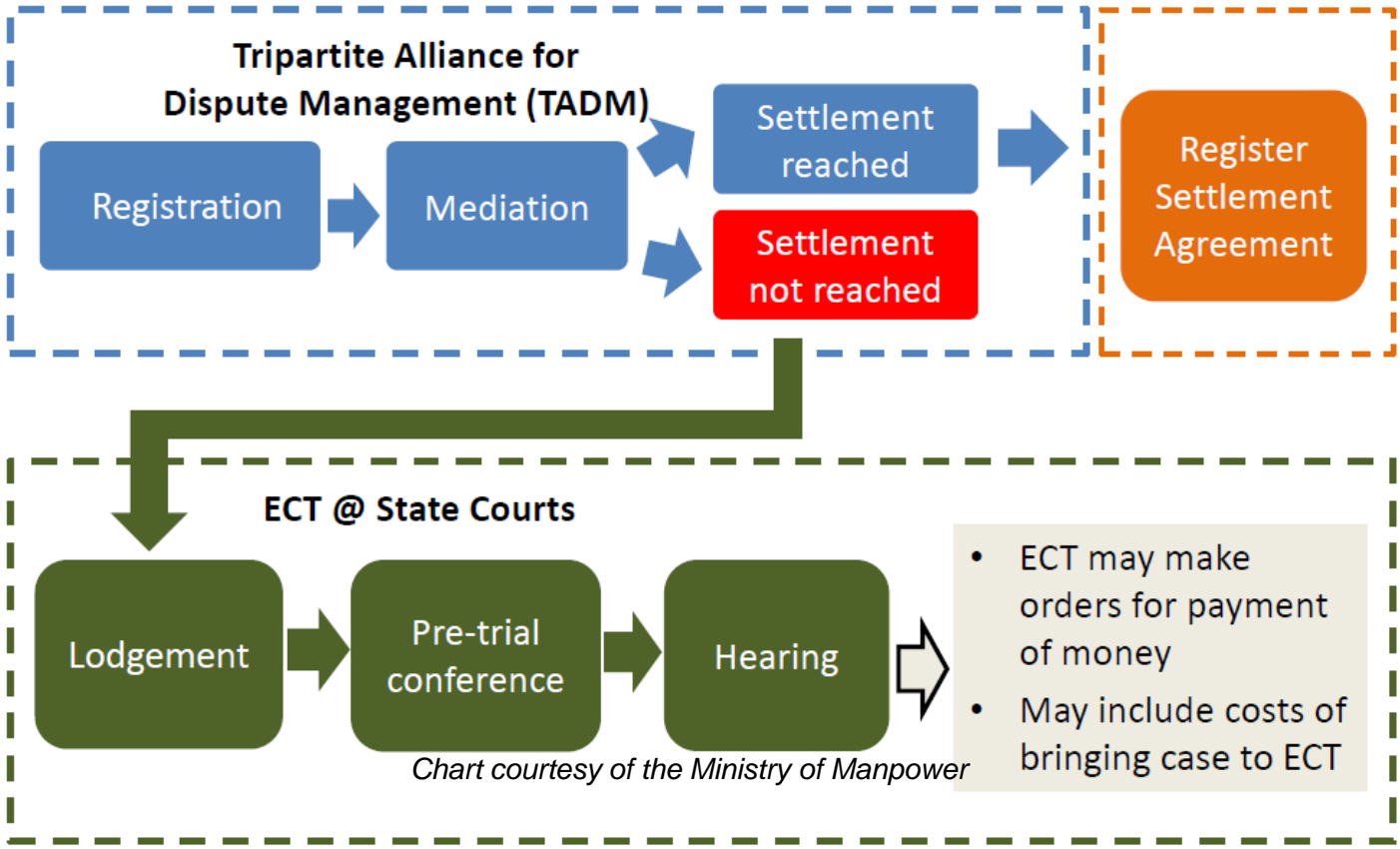
- Commenced on 1 April 2017
- Claims permitted:
 - Employees: salary-related claims (statutory or contractual)
 - Employers: salary in lieu of notice
- Jurisdictional limit: S\$20,000 (or S\$30,000 if parties utilise the Tripartite Mediation Framework or go through union-assisted mediation)

The Employment Claims Act 2016

- Mediation is compulsory
- Time bar: 6 months (for ex-employees) or 1 year (for current employees)
- Limited grounds of appeal to the High Court (leave needed + question of law or jurisdiction of ECT)
- Lawyers not allowed to represent any party at the ECT at all times.

The Employment Claims Act 2016

New dispute resolution process





4

Work Pass Applications

Work Pass Applications

MOM Compliance Reminder (31 August 2017)

- Recent arrest of foreign nationals in sting operation by MOM
- Reminder to employers about making accurate, complete and truthful declarations on work pass applications
- If convicted, employers can be fined up to S\$20,000 and/or jailed for up to two years per violation and lose their work pass privileges.



A black and white photograph of a spiral-bound notebook with a pen resting on it. A ruler is visible in the top left and bottom right corners. The notebook is open to a blank page. A red banner is overlaid at the bottom of the image.

5

New Tripartite Standards

Recent Developments

1. Tripartite Standard on Employment of Term Contract Employees
2. Tripartite Standard on Flexible Work Arrangements
3. Tripartite Guidelines on the Re-Employment of Older Employees

Term Contract Employees

New tripartite standard for term contract workers launched to better their employment conditions



Workers pass a UOB bank branch in Singapore's central business district. ST PHOTO: FILE

🕒 PUBLISHED JUL 31, 2017, 2:57 PM SGT | UPDATED JUL 31, 2017, 6:04 PM

Term Contract Employees

- Released on 31 July 2017, the Tripartite Standard on Term Contract Employees is the first of a series of Tripartite Standards that will be rolled out successively in the months ahead
- The Tripartite Standards identify and recognise progressive employers committed to practices that go beyond what is required under the Employment Act in the key areas of leave benefits, notice period and training
- Employers are encouraged to treat term contracts (renewable within one month of expiry of the previous contract) as a continuous period

Re-employment

Highlights of revised Tripartite Guidelines on the Re-employment of Older Workers



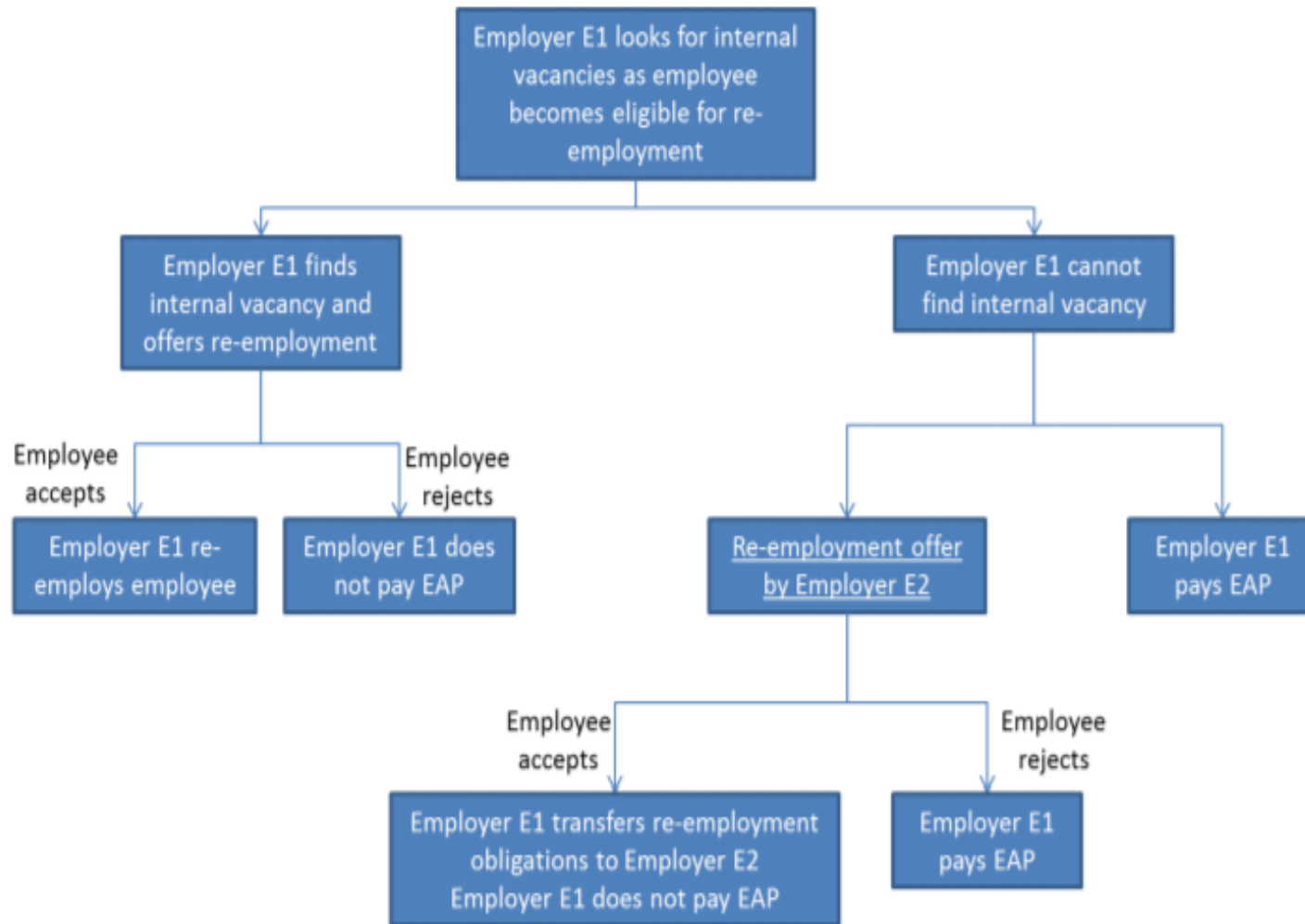
The Tripartite Committee on the Employability of Older Workers has updated guidelines on the re-employment of these workers. PHOTO: ST FILE

🕒 PUBLISHED MAY 18, 2016, 6:00 PM SGT | UPDATED MAY 18, 2016, 7:22 PM

Re-employment of Older Employees

- Effective 1 July 2017
- Re-employment age increased from 65 to 67
- Introduction of an option to allow re-employment of employee by another employer.
 - Consent of both the eligible employee and the second employer must be obtained;
 - The second employer must take over all re-employment obligations.
- Removal of option to reduce employees' wages at 60
 - However, employers can still negotiate a reduction in salary when offering re-employment opportunity

Employment Assistance Payment (“EAP”)



Flexible Work Arrangements

Over 250 Singapore firms adopt new tripartite standard on flexible work arrangements



Flexible Work Arrangements

- Effective 6 October 2017
- Under the Tripartite Standard, employers are encouraged to:
 - Offer Flexible Work Arrangements (“FWAs”) to employees; or
 - Consider employees’ request for FWAs, and offer alternatives arrangements where possible.
- Types of FWAs:
 - Flexible time: staggered hours and compressed work week.
 - Flexible place: telecommuting (i.e. working from home or satellite offices).
 - Flexible load: job sharing and varying work loads.

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6

Updates to MOM regulations

Recent updates to MOM regulations

Salary criteria for work pass holders to qualify for dependant privileges will be raised:

- From S\$5,000 to S\$6,000 for spouses and children
- From S\$10,000 to S\$12,000 for parents of main pass holders

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Dispute Resolution Annual Legal Update 2018
**Corruption and White-Collar
Crime**

Weiye Tan

January 2018





Agenda

- 1 Notable cases on bribery and corruption in Singapore

- 2 Other developments in Singapore

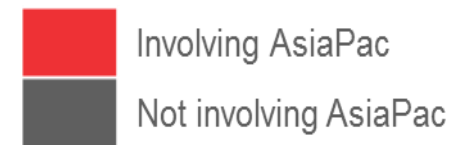
- 3 US DOJ's Guidance on Evaluation of Compliance Programs



1

Notable Cases on bribery and corruption in Singapore

Top 10 global settlements



Global Rank	FCPA Rank	Company	Enforcing Countries	Countries where violations were committed	FCPA Settlement	Global Settlement
1	14	Odebrecht/ Braskem (2016)	US, Brazil, Switzerland	South America	\$252	\$3557
2	NO US Settlement	J&F Investimentos (2017)	Brazil	Brazil	\$0	\$3106 (BRL 10.3 billion)
3	1	Siemens (2008)	US, Germany	Bangladesh, Iraq, Argentina, Venezuela	\$800	\$1654
4	5	Telia Company AB (2017)	US, Sweden, Netherlands	Uzbekistan	\$483	\$965
5	2	Alstom (2014)	US, Switzerland, UK	Indonesia, Saudi Arabia, Egypt and the Bahamas	\$772	\$812
6	19	Rolls-Royce Plc (2017)	US, UK, Brazil	China, India, Indonesia, Thailand, Malaysia, Nigeria, Russia, Brazil, Kazakhstan, Azerbaijan, Angola, Iraq	\$170	\$800
7	9	VimpelCom Limited (2016)	US, Netherlands, Switzerland	Uzbekistan	\$398	\$795
8	3	KBR / Halliburton (2009)	US	Nigeria	\$579	\$579
9	5	Teva Pharmaceutical (2016)	US	Ukraine, Mexico, and Russia	\$519	\$519
10	Not in top 20	GlaxoSmithKline plc (2016)	US, China	China	\$20	\$510

Keppel Offshore & Marine

- Global settlement - US\$422 million.
- US Department of Justice (“DOJ”) led investigations which uncovered Keppel Offshore & Marine (KOM) engaging in a scheme from 2001 to 2014 to pay \$55 million in bribes.
- Bribes were made by an agent of KOM to win 13 contracts with Petrobras, a Brazilian state-run oil company, and the then governing political party in Brazil, with the knowledge or approval of former KOM executives.
- KOM earned US\$351.8 million through the bribery scheme
- An additional US\$8.9 million in financial sanctions were imposed by KOM on 12 former of current employees as part of its disciplinary actions

Keppel's Deferred Prosecution Agreement (“DPA”) with US DOJ

- Keppel's total fine of \$422m is a 25% discount off the bottom of the applicable fine range under the US Sentencing Guidelines – the maximum cooperation and remediation credit allowed
- This follows after the authorities recognised KOM's full co-operation with the authorities
- KOM made extensive remedial measures, and embedded effective compliance and internal controls systems across its business
- KOM also took internal disciplinary actions against individuals involved in the misconduct, including dismissals and financial penalties
- However, KOM was not eligible for voluntary disclosure credit as the Fraud Section and Attorney's Office were already aware of the allegations

Response to KOM corruption

- Government maintains that incorruptibility remains a foundational value for Singapore, and it expects all Singapore companies to comply fully with the laws in the jurisdictions they operate in
- Recognised difficulty of operating in countries where corruption is strife,

BUT:

- there should be courage at corporate and individual level to walk away from shady deals
- if there is no way to do business in a country without paying bribes, then don't do business there
- no excuse of “this is simply how business is done overseas”

Notable corruption cases in Singapore in 2017

Ex-BP exec charged in \$5.7m bribery case

- Charged in court for obtaining about \$4 million in bribes (totaling 19 payments) to advance the business interests of businessman Koh Seng Lee's company with BP

Ex-national paddler's mother guilty of bribery

- The mother of a former national table tennis player was found guilty of offering a bribe to an official to be lenient to her son in disciplinary proceedings

Former ST Marine president who did not flag bribery sentenced to detention

- Senior executive as part of the ST Marine saga in 2014 failed to use reasonable diligence in performing his duties by ignoring information that pointed to criminal wrongdoing

Jail for woman who tried to bribe security guard

- A woman who was conducting vice activities in her condominium unit offered a \$100 bribe to a security guard as an inducement for not registering visitors to the flat – sentenced to 3 weeks' jail

Regulatory enforcement - MAS

- Sanctions against financial institutions
 - Falcon Bank & BSI Bank ordered to shut down because of “serious failures” in anti-money laundering controls and “improper conduct” by senior management in Switzerland and Singapore
 - Financial penalties of a total of S\$29.1 million imposed on BSI Bank, Falcon Bank, DBS, UBS AG, Standard Chartered Bank, Coutts, Credit Suisse and UOB
- Prohibition Orders (“PO”) against individuals
 - Three lifetime POs and a 15-year PO against employees of Falcon Bank & BSI Bank
 - 3-year PO against CEO of NRA Capital Pte Ltd



2

Other developments in Singapore

Proposed amendments to Criminal Procedure Code (“CPC”)

Proposed amendments to the CPC include:

- Increased computer-related powers of investigations
 - Current law gives investigative agencies power to access, inspect and search data on computers
 - Amendments allow investigators to:
 - Order production of evidence stored on computers (including computers outside of Singapore)
 - Order a person to provide login credentials to computer or cloud services account
 - Prevent a person from accessing computer or account by changing its password

Proposed amendments to Criminal Procedure Code (“CPC”)

- Deferred prosecution agreements (“DPA”)
 - Corporations taken to task would avoid criminal conviction if they meet the conditions of the agreement, but could pay higher fines compared to what the current criminal law provides for
 - Such agreements are only for corporate offenders represented by counsel and are fully voluntary
 - The terms of the agreement have to be approved by the High Court
- Legal professional privilege in the context of investigations
 - When investigators exercise powers of search and seizure, their powers are subject to legal professional privilege unless the statute provides otherwise

Recent judgments on legal professional privilege (“LPP”)

Singapore

- *ARX v Comptroller of Income Tax* [2016] 5 SLR 590 (CA)
 - LPP attaches to in-house counsel communications before 2012 amendments of Evidence Act

UK

- *The RBS Rights Issue Litigation* [2016] EWHC 3161 (Ch)
 - Narrow definition of “client” with respect to legal advice privilege (LAP)
 - LAP does not automatically extend to all employees/the entire organisation; must be shown that employees are authorised by or on behalf of the client to seek and receive legal advice
- *Director of the Serious Fraud Office v Eurasian Natural Resources Corporation Ltd* [2017] EWHC 1017 (QB) (on appeal)
 - No privilege over notes of interviews with employees, as there was no evidence that any of the persons interviewed were authorised to seek and receive legal advice on behalf of ENRC.
 - No litigation privilege as ENRC could not show that adversarial litigation was contemplated at the time that the documents were produced.

Cross-agency collaboration

- First conviction of market misconduct under joint investigations arrangement between MAS and CAD, SPF
 - Mr Tey Thean Yang Dennis was sentenced to a total of 16 weeks' imprisonment as a result of a conviction for market misconduct while working as a remisier with DBS
 - Joint investigation arrangement was first announced in March 2015, combining MAS' expertise in financial regulations and CAD's investigations and intelligence capabilities
 - Future prosecutions likely to follow under MAS-CAD collaboration
- Launch of Singapore Standard ISO 37001 by CPIB and Spring Singapore
 - Assist organisations of any size, in any location, in developing anti-bribery program
 - Standard based on internationally recognised good practices

New insider trading guide

- Launched by SGX in collaboration with the Association of Banks in Singapore (ABS), the Institute of Singapore Chartered Accountants (Isca), the Law Society of Singapore and the Singapore Institute of Directors (SID)
- Contains recommended principles and guidelines to help companies and their advisers retain control over the flow of confidential information
- Includes a list of recommendations and best practices, giving examples to illustrate how the principles and guidelines can be put into practice
- Suggests ways to strike a balance when it comes to restricting staff dealing in the company's securities and to create a culture of compliance
- Legal professionals who deal with confidential material and advise clients on these matters may also find the recommendations useful

Cross-jurisdictional collaboration

- Launch of International Anti-Corruption Coordination Centre (IACCC)
 - Jointly launched with Australia, Canada, New Zealand, UK and US in July 2017
 - IACCC intended to facilitate the sharing of information across multiple jurisdictions, and to coordinate enforcement actions against corruption

Summary of developments in Singapore

- Maintains zero tolerance stance towards corruption and bribery
- More proactive approach by Singapore authorities against corruption and white collar crime
 - Cross-agency collaboration
 - Cross-jurisdictional collaboration
- Changes in law
 - Proposed amendments to Criminal Procedure Code



3

US DOJ's Guidance on Evaluation of Compliance Programs

US DOJ's Guidance (February 2017)

US DOJ's New Compliance Program Evaluation Guidance (February 2017)

- The Guidance represents the latest in a series of important communications by the Fraud Section outlining the DOJ's expectations for effective corporate compliance programs.
- Instrumental checklist for all corporations designing, enhancing or implementing compliance programs with an eye towards more clearly understanding the DOJ's expectations
- Includes 11 key compliance program evaluation topics, with a corresponding set of "common questions" that the DOJ considers relevant in assessing compliance programs in a criminal investigation.
- Represents the most universally applicable and clearly articulated statement of the Fraud Section's primary focus areas to date.

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Dispute Resolution Annual Legal Update 2018
Intellectual Property

Abe Sun
Diana Bey

January 2018





Agenda

1 Trade Marks

2 Patents



1

Trade Marks

Courts (Singapore) Pte Ltd v. Big Box Corporation Pte Ltd

- Big Box alleged infringement of registered “BIG BOX” mark through demand letter

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COURTS

Courts (Singapore) Pte Ltd v. Big Box Corporation Pte Ltd

- Courts brought invalidation action before Registry.
- IP Adjudicator held that “BIG BOX” is:
 - not descriptive of any characteristic;
 - inherently distinctive and capable of performing its function as an indication of trade origin; and
 - not a generic term i.e., not commonly used by Singapore traders to describe a trader in the warehouse retailer sense, since retail market conditions in Singapore differed from the United States.

Nunufish.com v. U-Manga International Business Co., Ltd.

- Former distributor attempted to register “footpure” mark after licence was terminated



Nunufish.com v. U-Manga

- U-Manga commenced opposition proceedings before the Registry.
- Succeeded on the ground of passing off:
 - i. goodwill;
 - ii. actionable misrepresentation; and
 - iii. damage to goodwill of the business as a result of the misrepresentation.
- Ground of bad faith not pursued due to procedural irregularity.

The background of the slide is a high-angle, black and white photograph of a workspace. On the left, a dark ruler with white markings and numbers (36, 35, 34, 33, 32, 31, 30, 29, 75, 60) is visible. In the center, a spiral-bound notebook with a silver metal binding is open to a blank white page. A black pen lies diagonally across the bottom right of the notebook. The overall composition is clean and professional, suggesting a focus on design, engineering, or technical work.

2

Patents

Court has no original jurisdiction to revoke a patent

Sun Electric v Sunseap

- Patent: power grid system, method of determining power consumption
- As with string of previous cases (13), Defendant allowed to challenge validity by way of counterclaim for revocation of patent before the Court
- Appeal:
 - Patents Act makes reference to only Registrar of Patents (not Court)
 - Question of whether Court has original jurisdiction to revoke a patent had never been considered
 - Held: Court has no original jurisdiction to hear revocation proceedings or to revoke a patent by way of counterclaim in infringement proceedings

Eli Lilly v Actavis (UK Supreme Court)

- Eli Lilly – Patent for second use of pemetrexed disodium
- Actavis – Wanted to sell competing products using pemetrexed salts other than pemetrexed disodium
- Supreme Court found direct and indirect infringement via Doctrine of Equivalents (DOE)
- Shift in UK's approach from a Purposive Approach to DOE, Singapore likely to follow

Other Developments in Singapore

- Third party observations
- Re-examination



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Dispute Resolution Annual Legal Update 2018
Closing Remarks

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January 2018



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Dispute Resolution Annual Legal Update 2018

23 January 2018, Tuesday

The Straits Room, Fullerton Hotel Singapore



SCCA WELL-BEING CHAPTER

for In-House Counsel



SCCA Singapore Corporate
Counsel Association

CHAPTER MISSION

1

Raise awareness in the importance of overall well-being and show how increasing well-being can impact on professional and personal growth.

2

Equip in-house counsel with specific evidence-based strategies and techniques to achieve higher levels of well-being and growth.

3

Chapter launch 2018
WHERE ARE WE AT?

- currently generating data to calibrate where you as in-house counsel are;
- emerging trends relevant to professionals who may require assistance;
- enabling focused and targeted workshops, discussion forums to provide you with shared, learnings/tools/knowledge strategies & approaches to equip you with ways of increasing well-being



CHAPTER CONVENORS



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SCCA SECRETARY

Shi Yuan, ACIS, is the Legal Counsel of BCS Information Systems Pte. Ltd., a systems integrator which possesses its own in-house suite of high speed, high volume precision clearing and payment systems for central and commercial banks, clearing houses, regulators, businesses and consumers in Singapore and across the globe.



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Seasoned, experienced legal and compliance professional. Over 3 decades of legal experience. UK solicitor. Admitted to the “Role of Solicitors” in November 1985.

5 years in private practice in City of London with Tarlo Lyons (2 years) and Reynolds Johnson & Green (3 years), respectively.

Specialising in corporate and commercial legal matters both in U.K and since late 2000 in the Asia Pacific region based in Singapore.



MS MONISHA KAMDAR

Monisha Kamdar is a lawyer with 15+ years experience (in-house and private practise). Based in Singapore since 2002, Monisha has held leadership positions at Raiffeisen Bank International AG, Singapore where she oversaw the legal function for all of the Bank’s business in the entire APAC region (excluding China).

MORE ON WELL-BEING CHAPTER

Please look out for upcoming workshops/seminars later in 2018!

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