



RESPONDEK & FAN

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Dear Reader,

This issue of the E-Bulletin focuses first on some new important SGP laws and regulations (Choice of Courts Agreement Bill; new SGP Guidelines on the Enforcement of the Data Protection Provisions; SGP's tightened rules for employment pass applications and some changes in SGP's employment laws) and also practically important new laws in Thailand regarding security for payments.

As usual, if you have any comments, remarks or questions, we would love to hear from you.

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Kind regards,

RESPONDEK & FAN

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SGP: Choice of Court Agreements Bill 2016

On 14 April 2016 Singapore's Parliament passed the "Choice of Court Agreements Bill". The Bill will implement the Hague Convention on "Choice of Court Agreements" concluded at the Hague on 30 June 2005 (the "Convention"). The Convention establishes an international legal regime for upholding exclusive choice of court agreements in international civil or commercial cases, and governs the recognition and enforcement of judgments amongst parties to the Convention.

The key benefits of the Convention are that (i) the court explicitly chosen by parties under an exclusive choice of court agreement, and not some other court, will hear their dispute and (ii) that the courts of contracting states will enforce the judgment of the chosen court, leading to better enforceability of Singapore judgments in other jurisdictions.

Apart from Singapore, all of the countries in the European Union (except Denmark), Mexico, Ukraine and the United States have signed the Convention.

The ratification of the Convention will significantly enhance the international enforceability of Singapore court judgments, including those of the Singapore International Commercial Court, further enhancing Singapore's role as a preferred international dispute resolution venue.

SGP: New SIAC Rules 2016

The SIAC is in the process of finalizing new SIAC rules that will replace the SIAC 2013 Rules. Amendments will include new rules on multiple contracts, consolidation and joinder as well as improvements to the existing emergency arbitrator and expedited procedures. Although the 2016 Rules were announced to be effective on 1 June, they are still subject to final review.

SGP: New Guidelines on the Enforcement of the Data Protection Provisions

On 21 April 2016, the Personal Data Protection Commission ("Commission") issued new Advisory Guidelines on the Enforcement of the Data Protection Provisions ("Guidelines"), which outline the Commission's objectives and approach to enforcing the data protection provisions of the Personal Data Protection Act (the "Act"; https://www.pdpc.gov.sg/docs/default-source/advisory-guidelines-on-enforcement/part_ivinvestigations.pdf?sfvrsn=2).

The Guidelines clarify the objectives and approach the Commission will take when enforcing the Act. The Commission's objectives are to facilitate the resolution of

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an individual's complaint relating to an organisation's contravention of the Act and to ensure that organisations comply with the obligations imposed by the Act.

SGP: Tightened Rules for Employment Pass Approval

Until now, when reviewing EP applications, MOM only considered the foreign applicants' background such as qualifications, experience and salary. This focus that was limited to the applicant's merits will now shift and when processing EP applications, MOM will henceforth take into consideration two aspects, i.e. the merits of the EP applicant as well as the employer.

The Singapore Ministry of Manpower will now for the first time also consider three "company-related" factors when reviewing Employment Pass ("EP") applications, i.e.:

- the proportion of Singaporeans hired by the company compared to the industry average;
- the commitment of the company to hire and develop Singaporeans; and
- the contribution of the company to the Singapore economy and society.

The new criteria for EP applications are likely to make it more difficult for employers to hire foreign employees which could lead to serious consequences for some employers. Therefore employers should ensure they have the necessary evidence and documents on hand to support the hiring of foreign nationals.

SGP: New Leave Enhancements for Fathers from 2017

HR departments should take note of the following important legal changes with regard to paternity leave. So far, fathers were eligible for one week of paternity leave while a second week of paternity leave was voluntary for employers. The second week will now be made compulsory. On April 13, the Singapore government announced that a second week of paternity leave will be legislated for fathers of Singapore citizen babies born from January 1, 2017. With the change, the Government will pay for the extra week of compulsory paternity leave, capped at SGD2,500 per week including Central Provident Fund contributions.

Shared parental leave will also be increased from one to four weeks for children born from July 1, 2017, with this month of leave to be shared from the mother's maternity leave.

Including six days of childcare leave and one week of unpaid infant care leave, fathers will then be able to take up to two months of leave within the baby's first year. To qualify for the paternity leave and shared parental leave, fathers must be married to the child's mother, and the child must be a Singapore citizen.

SGP: Key features of proposed Employment Claims Tribunal

Currently, employees covered by the Employment Act (EA) in Singapore can file salary-related complaints with the Commissioner for Labor. Employees who are not covered by the EA (which includes professionals, managers and executives earning more than SGD4,500 per month) must file their claims with the civil courts, which the Ministry of Manpower ("MOM") views as lengthy and costly. In the interest of creating a uniform



system that renders judgments more quickly, the SGP government has released plans for an Employment Claims Tribunal (“ECT”) to handle salary-related disputes.

The ECT would hear only salary-related claims. Other workplace disputes and grievances such as claims for unfair dismissal would remain subject to review by the Ministry of Manpower or civil courts depending on the employees who are party to the issue.

In a public consultation exercise earlier this year, MOM further expanded on the details of the main features of the ECT proposal as follows:

- The ECT will handle salary related-disputes for all levels of employees regardless of salary, with a few exceptions.
- The ECT will reside within the Singapore court system, not MOM, and will replace MOM’s Labour Court.
- Mediation will be mandatory before the ECT hears a claim.
- Claims will be capped at SGD20,000 or SGD30,000 depending on the mediation forum used.
- Time limits apply – claims must be brought within 12 months of the dispute arising, or within 6 months following termination of employment.

SGP – Important Changes in Employment Law

Effective 1 April 2016, all employers in SGP are required to:

- i. Issue itemized pay slips to all employees covered under the EA in an effort to promote clarity on salary computation and minimize and facilitate the

resolution of any salary disputes.

- ii. Issue key employment terms (“KETs”) in writing to all employees covered under the EA. This is so as to provide greater clarity and assurance to employees about their main employment terms and benefits. Generally, KETs are required for all employees covered under the EA who are employed for 14 days or more and must be issued within 14 days from the start of their employment. The KETs may be in soft or hard copy and, where of common application to groups of employees, may be provided in employee handbooks or uploaded on the company intranet.
- iii. To maintain detailed employment records of all employees covered under the EA.

Thailand: Passing of Business Security Act

Thailand’s new Business Security Act (the “Act”) will come into force on 2 July 2016. The Act makes significant changes to the regulations for creating security in Thailand by, among other things, expanding the types of assets that Thai entities can use as security for their financing. This will provide Thai companies greater opportunities to access financing and thereby develop their businesses. While the Thai Civil and Commercial Code had created only two types of security interest (mortgage; pledge), the Act extends the type of securities under a business Security Agreement to secure the performance of underlying debt.

Thailand: Employers may submit Work Rules by e-Filing

Employers in Thailand with ten or more employees must file a copy of their Work Rules (and subsequent



revisions) in the Thai language to the Director-General of the Department of Labor Protection and Welfare within seven days from the date the Work Rules are announced. Until recently, submission for filing has been done by mail or in person. On February 18, 2016, the Thai government issued an announcement which introduces a new e-filing system that allows employers to file their Work Rules electronically, instead of by post or in person. This provides a more efficient mechanism for employers.

Indonesia: Supreme Court Upholds Ruling that Contracts must be Written in Indonesian

On August 31, 2015, the Indonesian Supreme Court announced that it will uphold the ruling of the West Jakarta High Court in PT Bangun Karya Pratama Lestari v. Nine AM Ltd. (“BKPL” and “Nine AM”), which nullified and voided a loan agreement between the parties. Since the agreement was executed only in English, the court held that it violated Indonesian law requiring that contracts be drafted in Indonesian. Investors should take note that failure by the parties to execute an Indonesian-language counterpart will provide grounds for nullification of the underlying agreement.

It is strongly suggested that agreements entered into between foreign parties and Indonesian parties which are governed by Indonesian law should always be prepared in two languages, i.e. Indonesian language and the foreign language.

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