

## CLIENT UPDATE 2016 AUGUST



### EMPLOYMENT

# The Employment Claims Tribunals – A Consolidated Forum for Salary Disputes

## Introduction

The Employment Claims Bill was passed in the Singapore Parliament on 16 August 2016. The Bill introduces a new forum for the resolution of salary-related disputes between employers and employees – the Employment Claims Tribunals (“ECT”). The ECT aims to provide a more consolidated and cost-efficient avenue for salary-related claims of up to \$20,000 (or \$30,000 where unions are involved).

The ECT will be available to professionals, managers and executives (“PMEs”) earning more than \$4,500 a month, who form an increasing proportion of Singapore’s workforce. Currently, these PMEs do not have recourse to a specialised employment dispute forum, and have to go to the Civil Courts for their employment claims.

The ECT will also take over the function of the Labour Courts in terms of hearing salary-related disputes. The Labour Courts currently provide a forum for the hearing of employment claims for rank-and-file employees and PMEs earning less than \$4,500 a month.

The introduction of the ECT marks a significant shift in the field of employment disputes. In this Update, we look at the key features of the ECT, its powers and its procedures.

## What is the ECT?

The ECT will exist as part of the State Courts. Claims will be heard by legally qualified Tribunal Magistrates.

Before any claim reaches the ECT for hearing, the parties must first go through mediation, which will be conducted by mediators approved by the Ministry of Manpower. Mediation has been proven to be an extremely efficient and cost-effective dispute resolution tool. In claims before the Labour Courts, more than 90% of claims were resolved at the mediation stage without having to go through formal hearings.

If the parties fail to reach a settlement in the course of mediation, the claimant may lodge a claim at the ECT. The salient features of the ECT are:

- (i) The claim will be heard by a tribunal presided over by a Tribunal Magistrate.
- (ii) The proceedings before the tribunal are informal and are generally conducted in private.
- (iii) The tribunal will adopt a Judge-led approach, meaning that the tribunal will identify the issues and ensure that the relevant evidence is produced, directing parties to appear or documents to be produced where necessary.
- (iv) Parties must act in person, and cannot be represented by an advocate and solicitor.

At the end of proceedings, the tribunal will determine the claim and make the relevant order. Parties may appeal to the High Court on any ground involving a question of law, or if the claim was outside the jurisdiction of the tribunal.

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#### What Claims Will the ECT Hear?

The ECT aims to provide a more consolidated avenue for employees to bring their claims. Unlike the current Labour Courts, which is only available to rank-and-file employees, the ECT covers PME's earning more than \$4,500 a month.

Importantly, the ECT will not hear all employment disputes as it will only cover salary-related disputes. The scope of the ECT's jurisdiction over salary-related disputes is as follows:

- (i) The ECT will cover statutory salary-related disputes on employee entitlements under the Employment Act, Retirement & Re-employment Act and the Child Development Co-Savings Act, taking over this function from the Labour Courts. These include unpaid salary, overtime pay, salary in lieu of notice, employment assistance payment and maternity benefits.
- (ii) It will also cover contractual salary-related claims from employees. These include payment of allowances, bonuses, commissions, salary in lieu of notice and retrenchment benefits, provided that these are expressed in monetary terms in the contract.
- (iii) The ECT will also hear claims from the employers, but on significantly narrower grounds – i.e. only where these claims are for salary in lieu of notice.

The full list of matters which the ECT will hear is stated in the First and Second Schedule of the Employments Claims Bill, which is available [here](#).

Notably, the ECT does not cover:

- (i) Claims that are not related to salary, such as allegations relating to unfair dismissal or workplace discrimination;
- (ii) Contractual salary-related claims of public servants, domestic workers and seafarers; and
- (iii) Claims above \$20,000, or – if there is union involvement in mediation – above \$30,000.

#### What this Means for Employers

The ECT is significant in its extended coverage of PME's and for providing a simplified and accessible forum to bring simple salary disputes against employers. Currently, PME's have to bring civil claims in the Courts which involve higher barriers to entry such as legal costs and the requirement to navigate and comply with civil procedure.

The availability of the ECT means that employers should be prepared for their PME employees to be more litigious and to resort more quickly to this new process to seek relief. To mitigate this, employers should consider adding in a contractual requirement for an aggrieved PME employee to *first* negotiate / mediate his/her dispute with the appropriate levels of management internally – and to of course establish the internal processes and mechanisms to ensure that any dispute gets an opportunity to be resolved internally and can be nipped in the proverbial bud before it escalates into a civil claim, whether or not it proceeds to the ECT or the civil courts.

If, despite providing sufficient internal mechanisms to the PME employee to negotiate or mediate his/her dispute, the PME still persists in filing a claim with the ECT as a first recourse, then, depending on the facts, the employer may have sufficient basis for taking the position that the PME has behaved unreasonably.

It is also pertinent to note that any complaint brought to the ECT will first be sent for mediation. This means that employers will still have the opportunity to resolve the dispute in a cost-effective, non-adversarial and confidential setting.

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Finally, the simplified framework of the ECT which is Judge-led and excludes legal representation means that it is unlikely that a hearing before the ECT will be overly complex and/or costly.

Conversely, this also means that in order to represent themselves effectively and capably at mediations and at the ECT before the Tribunal and to defend against claims asserted by PME employees, it is critical that employers must quickly familiarise themselves with the scope of the ECT's jurisdiction and its procedures; and acquire the necessary skills to be an effective advocate at mediation and before the Tribunal.

### Concluding Words

Although the Employment Claims Bill has yet to come into force, it is anticipated that the ECT will be established by April 2017, so this means that employers have no more than 8 months to prepare themselves before their employees can avail themselves to the ECT.

For more information on how to prepare your organisation to be ready for the ECT, please contact our team below.

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### ***ASEAN Economic Community Portal***

With the launch of the ASEAN Economic Community (“AEC”) in December 2015, businesses looking to tap the opportunities presented by the integrated markets of the AEC can now get help a click away. Rajah & Tann Asia, United Overseas Bank and RSM Chio Lim Stone Forest, have teamed up to launch “Business in ASEAN”, a portal that provides companies with a single platform that helps businesses navigate the complexities of setting up operations in ASEAN.

By tapping into the professional knowledge and resources of the three organisations through this portal, small- and medium-sized enterprises across the 10-member economic grouping can equip themselves with the tools and know-how to navigate ASEAN’s business landscape. Of particular interest to businesses is the “Ask a Question” feature of the portal which enables companies to pose questions to the three organisations which have an extensive network in the region. The portal can be accessed at <http://www.businessinasean.com/>.

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