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LEGAL UPDATES

Retirement and Re-employment Act (RRA) passed in Parliament

On 11 January 2011 the Parliament of Singapore passed the Retirement Age (Amendment) Bill. Once the Bill comes into force, the current Retirement Age Act (**Cap 274A**) will be renamed the Retirement and Re-employment Age Act (**the 'Act'**). The primary aim behind the amendment is to enhance financial security in old age and to allow Singapore's ageing population to remain active while making valuable contributions to their organisations.

The Act applies to employees who attain the age of 62 years on or after 1 January 2012, and who decide to continue working beyond their retirement age. In such cases, the Act requires the employer to offer re-employment to an ageing employee if the employee meets certain criteria such as satisfactory work performance and being medically fit. This obligation to re-employ continues until the employee reaches the age of 67 years.

If such re-employment is in fact offered, the employer is permitted to vary the terms of employment for that employee which may include a variation of the employee's job scope and salary so long as such variations are based on reasonable factors. However, if re-employment is not offered, employer is then required to make a one-time Employment Assistance Payment (**'EAP'**) to the employee. This is for eligible older workers who still want to work, but are not re-hired as there is no suitable job vacancy for them in the company. The Act provides guidance on how best to determine the EAP amount. Employers and workers with a dispute about re-hiring can approach the Ministry of Manpower (MOM) for help

Employers are therefore encouraged to put in place suitable appraisal systems to assess their workers' performance. It is the employers' responsibility to show proof that a worker is not suitable to be re-hired. The penalty for non-compliance is now S$10,000, while the fine for offences was raised to S$1,000 - up from S$500.

Director's Right of Inspection of Company Accounts

Hau Tau Khang v Sanur Indonesian Restaurant Pte Ltd and Anor and Another Matter [2011] SGHC 97

The Singapore High Court held in this case that a director's right to inspect company's accounts was displaced if intended to be used for a purpose which is not connected to the discharge of his duties. However, the court did say that the burden of showing the unconnected purported was on the opposer of the right. Until then, the default position would be that such a right of access to company accounts and corporate information exists as of right.

In this case, the appellant director informed the Court that the motivation behind his inspection was to answer allegations against him of financial irregularities in the company's accounts, which he had no access to.

On the authority of *Oxford Legal Group Ltd v Sibbasbridge Services plc* ("*Oxford Legal*"), the appellant argued that such a purpose was "improper". The Court disagreed, holding that there was no principled reason why the

director's absolute right should be displaced. The inspection in the present case had sufficient nexus to the appellant's duties as a director. *Oxford Legal* could also be distinguished as the director there had exercised the right to inspect in order to subvert the discovery process where he had difficulties fulfilling the thresholds of relevance and necessity. No such circumstances could be found in the present appeal

As a secondary issue, the Court dismissed the appellant's separate application for specific discovery of the company's accounts. Specific discovery prior to the filing of pleadings would not be ordered unless the appellant could prove exceptional circumstances. The appellant's argument that there would be savings on time and cost was untenable in view that there were many allegations against him in the separate derivative suit launched by the respondent. Specific discovery of the company's accounts would only enable him to dispose of the allegation of financial irregularities

Dispute Resolution and Arbitration

Astrata (Singapore) Pte Ltd v Portcullis Escrow Pte Ltd [2011] SGCA 20

The Singapore Court of Appeal considered whether 2 parties to an escrow agreement were obliged to refer a dispute under that agreement to arbitration if that escrow agreement was entered into under a separate supply agreement which contained an arbitration clause. The escrow agreement itself had provided for a dispute resolution mechanism and for submission to the non-exclusive jurisdiction of the Singapore courts.

After studying the entire agreement clauses in both the escrow agreement and the supply agreement, the court held that the words used did not evince an intention that the arbitration agreement in the supply agreement was intended to be applicable to disputes arising out of the escrow agreement.

The Court of Appeal decision also highlighted the dangers in using boilerplate clauses, in particular, language commonly used in Singapore or English law contracts to provide that insolvency is an event of default or termination. The Court of Appeal observed that there was disagreement on the meaning and effect of the triggering events for release of the escrow, because the draftsman had appeared to have simply incorporated boilerplate clauses, drafted for use in the context of an English model of companies insolvency legislation, into a commercial agreement to which a US company is a party.

The case is also significant because it underscored the Court of Appeal's approach to contract interpretation and agreed with the plaintiff that it was preferable to give more weight to the underlying commercial purpose of the clause being interpreted so long as the words permit such an interpretation and particularly so when the words are not terms of art. Accordingly, the Court of Appeal decided that the purpose of the clause was better served by giving key words their popular meaning rather than superimposing meanings from English or Australian case law on a US company.