

Client Alert

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The Employment Claims Tribunal – Changing the Landscape in the Resolution of Employment Disputes?

On 25 February 2016, the Ministry of Manpower (“**MOM**”) conducted a public consultation on the proposed establishment of an Employment Claims Tribunal (“**ECT**”) to address salary-related employment claims. It was envisioned that the ECT would be established under the jurisdiction of the State Courts’ Community Justice and Tribunals Division, which currently oversees the Small Claims Tribunal (“**SCT**”).

Following the public consultation, which we participated by the contribution of our feedback on various aspects of the proposed ECT, the Employment Claims Bill (the “**Bill**”) was read for the first time in Parliament on 11 July 2016. This client alert provides an analysis of the key features of the Bill.

Key Provisions

Jurisdiction of the ECT

Unlike the Employment Act (“**EA**”), which expressly excludes from its scope, amongst others, any person that is employed in a managerial or an executive position and is in receipt of a salary exceeding \$4,500 a month, the Bill contemplates coverage of all employees. Presently, the Bill defines an “employee” as any individual who has entered into and works under a contract of service with an employer¹. However, the Bill provides that the ECT only has jurisdiction to hear and determine claims which satisfy certain requirements, including a requirement that the claims be brought by prescribed employees or prescribed classes of employees vis-a-vis certain types of claims.

Details as to the prescribed employee or prescribed classes of employees insofar as the various types of claims are concerned are pending for the moment and subject to the issuance of Regulations. However, what is presently clear is that the ECT’s jurisdiction is limited to claims relating to “specified employment disputes”. “Specified employment dispute” is defined under the Bill to cover two classes:

- (i) “Specified contractual disputes”, being disputes relating to matters specified in the First Schedule of the Bill. These matters include the following:
 - annual wage supplement;
 - bonus payment;
 - commission;
 - medical benefit;
 - overtime payment;

¹ Section 2 of the Bill

- salary;
 - salary in lieu of notice of termination;
 - termination benefit; and
- (ii) “Specified statutory disputes”, being disputes relating to matters specified in the Second Schedule of the Bill. These matters include the following:
- a female employee’s entitlement to paid maternity leave and payment for working during the benefit period before her confinement, as prescribed under the Child Development Co-Savings Act;
 - an employee’s entitlement to employment assistance payment, as prescribed under the Retirement and Re-employment Act²;
 - an employee’s entitlement to payment³ if the employer terminates the contract of service without notice or without waiting for the expiry of that notice (and *vice versa*⁴) as prescribed under the EA; and
 - a female employee’s entitlement to paid maternity leave and payment for working during the benefit period before her confinement⁵ as prescribed under the EA.

The other requirements which must be satisfied for a claim to be brought before the ECT include the following:

- the claim must be in respect of a liquidated amount;
- a claim referral certificate must be issued in respect of the specified employment dispute for which the claim is lodged;
- the claim must be lodged with the tribunal within the prescribed time period; and
- the total amount being claimed cannot exceed the prescribed claim limit.

Compulsory Mediation as a Pre-Condition

In respect of the requirements for a claim referral certificate, the Bill expressly mandates the parties to undergo mediation before filing their claims in the ECT⁶. Parties to the mediation must act in person and cannot be represented by lawyers or any other agents, whether paid or otherwise⁷.

The mediation session, which is held in private, will be presided over by an approved mediator⁸, and is compulsory unless the approved mediator is satisfied that there is no reasonable prospect of settling the dispute through mediation⁹.

If the dispute is settled at mediation, the parties must enter into a settlement agreement and the total amount payable to a party must not exceed the prescribed claim limit applicable to that party¹⁰. If parties are unable to achieve a settlement at the end of the mediation, the approved mediator must issue a claim referral certificate¹¹, which is required for any claim to be made before the ECT¹².

² Section 7C(1) of the Retirement and Re-employment Act

³ Section 11(1) of the EA

⁴ Section 11(1) of the EA

⁵ Section 76 of the EA

⁶ Section 3(1) of the Bill

⁷ Section 5 of the Bill

⁸ Section 3(5) of the Bill

⁹ Section 4(2) of the Bill

¹⁰ Section 7 of the Bill

¹¹ Section 6 of the Bill. Note that the claim referral certificate must also be issued where the respondent does not attend the mediation, or where the approved mediator is satisfied that there is no reasonable prospect of settling the dispute through mediation.

¹² Section 12(5) of the Bill

Claim Limit

During the public consultation, the MOM proposed capping the jurisdictional limit of the ECT to S\$20,000 per claim so as to bring the jurisdiction of the ECT in line with the SCT. It was further proposed to increase the claim cap to S\$30,000 for claimants who adopt the Tripartite Mediation Framework or the MOM conciliation framework prescribed under the Industrial Relations Act.

The Bill, however, is silent on the monetary value of the claim limit, and only goes so far as to state that the total amount alleged to be payable cannot exceed the claim limit¹³. Insofar as the actual claim limits are concerned, this is not specified in the Bill, although it appears that these limits, assuming the thresholds remain unchanged, will be prescribed separately through various Regulations¹⁴.

Tribunal Proceedings

The tribunal will be presided over by a tribunal magistrate, who must be a qualified person under the Legal Profession Act (“LPA”)¹⁵. All proceedings before a tribunal are to be conducted in private¹⁶. As with mediation sessions under the Bill, parties must act in person and cannot be legally represented or represented by an agent, whether paid or otherwise¹⁷. Proceedings before the tribunal are to be conducted in an informal manner and the tribunal is to adopt a “judge-led” approach, i.e., to identify the relevant issues in the claim and to ensure that relevant evidence is adduced by the parties¹⁸.

On this note, it bears noting that a tribunal is not bound by rules of evidence in the conduct of any proceedings and may inform itself on any matter in such manner as it thinks fit¹⁹. Evidence rendered to a tribunal need not be given on oath or affirmation unless so required by the tribunal. Furthermore, a tribunal may seek other evidence as it thinks fit, and may require written evidence given in tribunal proceedings to be verified by statutory declaration.

Upon conclusion of the proceedings, a tribunal may make one or more of the following orders:

- an order requiring one party to pay money to the other;
- an order dismissing the whole or any part of the claim; and/or
- an order requiring one party to pay costs to the other²⁰.

Appeals

In the event that a party is dissatisfied with the outcome of the proceedings, that party has a right of appeal to the High Court. Such an appeal may be brought only with leave of a District Court and:

- on grounds involving a question of law; or
- on grounds that the claim was outside the jurisdiction of the tribunal.

The High Court may dismiss the appeal, allow the appeal and set aside or vary the order, or remit the matter to the tribunal for reconsideration²¹. Any

¹³ Section 12 of the Bill

¹⁴ Section 12 of the Bill

¹⁵ Section 9 of the Bill

¹⁶ Section 18 of the Bill

¹⁷ Section 19 of the Bill

¹⁸ Section 20 of the Bill

¹⁹ Section 21 of the Bill

²⁰ Section 22 of the Bill

²¹ Section 23 of the Bill

decision by the High Court on an appeal against an order made by a tribunal, and on an application for a stay of execution of such an order, is final²².

Comments

The Bill seeks to provide a speedy and inexpensive forum for the resolution of employment disputes and a viable option for individual employees to seek recourse in respect of salary-related claims. As alluded to in the Public Consultation, currently, the Labour Court provides adjudication services to resolve salary-related claims between employers and employees covered under the Employment Act only. As highlighted above, this option is not open to managers and executives earning more than \$4,500 per month. In the event that such individual employees wish to pursue an employment-related claim, they would have to commence action in the civil courts in the normal course. The Bill thus provides a forum to resolve salary disputes for all employees, subject to the prescribed claim limit applicable to the claimant.

The Bill also provides much-needed clarification as to the types of claims that will fall within the ambit of the Bill and the jurisdiction of the ECT. The earlier public consultation document has simply made references to “*salary-related claims*”, claims “*provided in monetary terms*” and “*statutory claims*”, without further elaboration.

However, a few requirements should be highlighted.

The Bill contemplates mandatory mediation. Such a requirement may undermine the objective of the ECT providing an expeditious forum for resolution of the relevant disputes. The ECT process is already designed to function as a fast-track dispute resolution mechanism and matters should be able to be resolved expediently pursuant to the process. The introduction of mandatory mediation as a pre-condition to filing a claim before the ECT simply adds an additional hurdle to the process.

The Bill provides that ECT proceedings are to be conducted in private and parties are not permitted to have legal representation. As the Bill is intended to cover a large proportion of the workforce, it is likely that the ECT will hear a substantial number of cases. It would therefore be helpful for the development of law for ECT proceedings to be open or for decisions of the ECT to be published, and for parties to be represented should there arise issues in dispute on which the ECT or parties may be assisted by counsel. Parties utilising the ECT will also have greater visibility and certainty in respect of the ECT and the process. Moreover, questions remain over the appeal process to the High Court, and whether legal representation is permitted at that stage. Given the finality of the determination and the limited appeal avenue, further consideration should be given to these matters.

In addition, the Bill does not specify the principles to be applied by the ECT, in particular whether legal rights or equity will be the driving force behind the decisions of the ECT. Under the EA, it is stated that the Commissioner shall act “according to equity and good conscience and the merits of the case without regard to technicalities”²³ in proceedings brought before him. However, it is suggested that *legal principles* should take precedence in proceedings before the ECT to ensure greater certainty for employers and employees, and to allow for a structured development of the body of case law on which future claimants and adjudicators may rely.

Furthermore, while the flexibility in the rules concerning the admissibility of evidence in proceedings before the ECT may mean that parties are not

²² Section 26 of the Bill

²³ Section 119(2)(b) of the EA

constrained by overly legal evidentiary rules (for example, hearsay), it is still necessary to have limits or restrictions (e.g., in respect of *without prejudice* or privileged documents). The Bill does not make this clear.

Conclusion

In conclusion, the establishment of the ECT is certainly a welcome development. The Bill provides extensive coverage for employees, clarifies the types of claims that fall within its purview, and seeks to ensure the expeditious resolution of certain claims. However, certain features of the Bill raise concerns. Moving forward, we await further news on the pending Regulations. The Bill is still in its infancy and its passage through the legislature prior to enactment will be subject to further debate and refinement. This is accordingly something worth keeping tabs on for the foreseeable future.