

Industrial Relations (Amendment) Bill

Bill No. 31/2010.

Read the first time on 18th October 2010.

A BILL

intituled

An Act to amend the Industrial Relations Act (Chapter 136 of the 2004 Revised Edition) and to make related amendments to the Employment Act (Chapter 91 of the 2009 Revised Edition).

Be it enacted by the President with the advice and consent of the Parliament of Singapore, as follows:

Short title and commencement

1. This Act may be cited as the Industrial Relations (Amendment) Act 2010 and shall come into operation on such date as the Minister may, by notification in the *Gazette*, appoint.

5 Amendment of long title

2. The long title to the Industrial Relations Act (referred to in this Act as the principal Act) is amended by inserting, immediately after the word “arbitration”, the words “and for tripartite mediation of individual disputes”.

10 New Part IVA

3. The principal Act is amended by inserting, immediately after section 30E, the following Part:

“PART IVA

TRIPARTITE MEDIATION OF DISPUTES INVOLVING EXECUTIVE EMPLOYEES

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Interpretation of this Part

30F. In this Part —

“executive employee”, in relation to an employer, means an employee who is an executive employee within the meaning of Part IV and who —

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(a) is in receipt of a salary not exceeding \$4,500 a month (excluding overtime payments, bonus payments, annual wage supplements, productivity incentive payments and any allowance however described), or such other amount as may be prescribed by the Minister; and

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(b) is a member of a trade union which has not been given recognition by his employer under section 17,

but does not include any person belonging to any class of persons whom the Minister may, from time to time, by notification in the *Gazette*, declare not to be executive employee for the purposes of this Part;

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“federation” has the same meaning as in the Trade Unions Act (Cap. 333);

“salary” has the same meaning as in the Employment Act (Cap. 91);

5 “tripartite mediation” means mediation under this Part conducted by a conciliation officer, between an executive employee and his employer, with the assistance of any tripartite mediation advisors who may be appointed, in an endeavour to reach a settlement in respect of disputes under section 30G;

10 “tripartite mediation advisor” means any tripartite mediation advisor appointed under section 30K.

Disputes for tripartite mediation

30G.—(1) Subject to subsection (2), only the following disputes may be the subject of tripartite mediation:

- 15 (a) any dispute relating to a breach of contract of employment by the employer of an executive employee;
- (b) any dispute relating to salary due to an executive employee; or
- (c) any dispute relating to the retrenchment benefit payable or
20 to be paid to an executive employee by his employer,

the material facts of which giving rise to the dispute occur on or after the date of commencement of this Part.

(2) The following disputes may not be the subject of tripartite mediation:

- 25 (a) any dispute where the material facts giving rise to the dispute occur earlier than one year before the date on which the Commissioner receives a notification under section 30H(2) relating to that dispute;
- (b) any dispute which arises out of or as a result of a termination
30 of the contract of employment of an executive employee, unless the Commissioner receives a notification under section 30H(2) relating to that dispute within 6 months after the termination of the contract of service.

Procedure for seeking tripartite mediation

5 **30H.**—(1) An executive employee who has a dispute with his employer may seek tripartite mediation by informing his trade union or any federation of which his trade union may be part of, of such dispute.

(2) The trade union or federation may notify the Commissioner of such dispute, in such form and manner as the Commissioner may determine.

10 (3) Upon receiving a notification of a dispute under subsection (2), the Commissioner may —

(a) direct a conciliation officer to conduct tripartite mediation of the dispute;

15 (b) assign or re-assign tripartite mediation advisors, at any stage prior to the commencement of the tripartite mediation proceedings, to assist the executive employee or his employer (who are parties to the relevant dispute) in the tripartite mediation;

(c) direct the executive employee and the employer to participate in the tripartite mediation; and

20 (d) of his own volition or upon request by either the executive employee or the employer, request any other party whom he deems appropriate, including but not limited to —

(i) an officer from the trade union of which the executive employee is a member; and

25 (ii) a representative of any business organisation of which the employer is a member,

to participate in the tripartite mediation by assisting the tripartite mediation advisors assigned under paragraph (b).

30 (4) The conciliation officer may conduct the tripartite mediation session in such manner as he deems fit and shall, subject to subsection (5), have the discretion to decide on the persons who may attend any mediation session.

(5) No party shall be represented by an advocate or solicitor or a paid agent at any mediation session.

Employer's right to object

30I.—(1) An employer may object to the eligibility of an executive employee to tripartite mediation but only on the ground that the executive employee —

- 5 (a) is employed in a senior management position or performs or exercises any function, duty or power of a person employed in a senior management position, including the control and supervision of major business operations, accountability for operational performance, formulation of business policies, plans and strategies and provision of leadership to other employees;
- 10 (b) performs or exercises any function, duty or power which includes decision making, or the power to substantially influence decision making, on any industrial matters including the employment, termination of employment, promotion, transfer, reward or discipline of other employees;
- 15 (c) performs any function or duty which includes representing the employer in any negotiation relating to any industrial matters;
- 20 (d) has access to confidential information relating to the budget and finances of the employer, any industrial relations matter or the salaries and personal records of other employees; or
- 25 (e) performs or exercises any other function, duty or power which may give rise to a real or potential conflict of interest if he is represented by the trade union or federation.

(2) Where an employer wishes to raise any objection under subsection (1), the employer shall, within 14 days from the date of the direction referred to in section 30H(3)(c) (or such longer period as the Commissioner may, in his discretion, allow in any particular case), give notice of his objection in the prescribed form and manner to the Commissioner stating precisely the grounds of his objection.

(3) In deciding whether the objection should stand, the Commissioner may consult one or more tripartite mediation advisors who, in the opinion of the Commissioner, are of sufficient standing

and experience to advise and make recommendations to the Commissioner in relation to such objection.

(4) Any tripartite mediation advisor who is consulted under subsection (3) shall not be assigned and shall not continue (if assigned) to assist the parties in the tripartite mediation under section 30H(3)(b).

(5) The Commissioner's decision as to whether any objection should stand shall be final.

Attendance at mediation sessions

30J.—(1) In the event that an executive employee who has been directed to participate in tripartite mediation under section 30H(3)(c) fails to attend any mediation session without reasonable excuse, the Commissioner may issue such further directions as he deems fit, including but not limited to terminating the tripartite mediation proceedings.

(2) In the event that an employer who has been directed to participate in tripartite mediation under section 30H(3)(c) fails to attend any mediation session without reasonable excuse, the Minister may in writing, direct such employer to attend a mediation session.

(3) Any employer who fails to comply with the Minister's direction to attend a mediation session under subsection (2) without reasonable excuse shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$5,000.

Tripartite mediation advisors

30K. The Minister shall appoint such persons as he thinks fit to be tripartite mediation advisors for the purposes of this Part and shall from time to time publish in the *Gazette* a list of the names of persons so appointed.”.

New section 88

4. The principal Act is amended by inserting, immediately after section 87, the following section:

“Power to compound offences

5 **88.** The Commissioner may, in his discretion, compound such offence under this Act as may be prescribed as being an offence which may be compounded by accepting from the person reasonably suspected of having committed the offence a sum not exceeding \$1,000.”.

Miscellaneous amendments to penalties

10 **5.** The sections of the principal Act specified in the first column of the Schedule to this Act are amended by deleting the fine or penalty (as the case may be) specified in the second column of the Schedule opposite that section and substituting in each case the fine or penalty (as the case may be) specified in the third column of that Schedule.

Related amendments to Employment Act

- 15 **6.** The Employment Act (Cap. 91) is amended —
- (a) by deleting “\$2,500” in section 2(2) and substituting “\$4,500”;
 - (b) by inserting, immediately after subsection (3) of section 115, the following subsection:

20 “(3A) Where the employee is employed in a managerial or an executive position, an order for the payment of money under subsection (1) shall not exceed \$20,000.”; and
 - (c) by deleting paragraph (a) of section 120 and substituting the following paragraph:

25 “(a) being an employee and a member of a trade union that has been given recognition under Part III of the Industrial Relations Act (Cap. 136) by the employer of the employee, may be represented by an officer of the trade union; and”.

THE SCHEDULE

Section 5

MISCELLANEOUS AMENDMENTS TO PENALTIES

<i>First column</i>	<i>Second column</i>	<i>Third column</i>
<i>Section</i>	<i>Old penalty</i>	<i>New penalty</i>
(1) Section 23(4)	Fine — \$2,000	Fine — \$5,000
(2) Section 35(10)	Fine — \$5,000	Fine — \$10,000
(3) Section 50(2)	Fine — \$1,000	Fine — \$5,000
(4) Section 51	Fine — \$2,000	Fine — \$5,000
(5) Section 52(1)(a)	Fine — \$1,000	Fine — \$5,000
(6) Section 52(1)(b)	Fine — \$500	Fine — \$1,000
(7) Section 52(1)(c)	Fine — \$100	Fine — \$1,000
(8) Section 55(5)	Fine — \$500	Fine — \$5,000
(9) Section 67(2)	Fine — \$500	Fine — \$5,000
(10) Section 72(6)	Fine — \$2,000	Fine — \$5,000
(11) Section 78(2)	Fine — \$2,000	Fine — \$5,000
(12) Section 79(1)	Fine — \$2,000	Fine — \$5,000
(13) Section 80	Fine — \$2,000	Fine — \$5,000
(14) Section 82(2)	Fine — \$2,000	Fine — \$5,000
(15) Section 82(5)	Fine — \$2,000	Fine — \$5,000
(16) Section 83	Penalty — \$100	Penalty — \$1,000
(17) Section 85	Fine — \$1,000	Fine — \$5,000
(18) Section 87(1)	Penalty — \$500	Penalty — \$5,000

EXPLANATORY STATEMENT

This Bill seeks to amend the Industrial Relations Act (Cap. 136) for the following main purposes:

- (a) to establish a new scheme for the mediation of some types of disputes involving employees who are employed in managerial or executive positions; and

- (b) to update and align penalties with those under the Employment Act (Cap. 91).

The Bill also makes related amendments to the Employment Act for the resolution of selected disputes.

Clause 1 relates to the short title and commencement.

Clause 2 amends the long title of the Act to reflect the inclusion of a new scheme for the tripartite mediation of certain types of disputes.

Clause 3 amends the Act to include a new Part IVA to establish a new scheme for the tripartite mediation of individual disputes involving executive employees.

Clause 4 inserts a new section to allow the Commissioner to compound offences.

Clause 5 makes miscellaneous amendments to the Act to update and align penalties with those under the Employment Act.

Clause 6 makes several related amendments to the Employment Act —

- (a) to raise the salary cap in section 2(2) of the Employment Act for those employed in managerial or executive positions, so that more of such persons can be regarded as “employees” for various provisions of the Employment Act, including section 115, which empowers the Commissioner to inquire into salary disputes between employees and employers and to make orders for the payment of money;
- (b) to amend section 115 of the Employment Act to place a \$20,000 limit on the orders that the Commissioner can make under section 115 in respect of claims by those employed in managerial or executive positions; and
- (c) to amend section 120 of the Employment Act to make it clear that an employee may only be represented by an officer of his trade union if the trade union has been given recognition by the employer.

EXPENDITURE OF PUBLIC MONEY

This Bill will not involve the Government in any extra financial expenditure.
