Tripartite Guidelines on Restraint of Trade Clauses: What Singapore Employers Must Do Now

Description

Singapore is on the cusp of a significant shift in how employment contracts are regulated. The tripartite working group on restraint of trade clauses â?? convened in August 2025 by the Ministry of Manpower (MOM), the National Trades Union Congress (NTUC) and the Singapore National Employers Federation (SNEF) â?? is expected to release its guidelines in the second half of 2026. For every Singapore employer who uses non-compete, non-solicitation or gardening leave clauses, the window to audit and prepare is now. Restraint of trade clauses in Singapore employment contracts have long existed in a legal grey zone: technically enforceable but often unenforceable in practice, depending on how they are drafted.

This guide explains the current legal framework, what the tripartite guidelines are expected to address, and the concrete steps employers should take before the guidelines take effect.

The Current Legal Position on Restraint of Trade Clauses in Singapore

Under Singapore common law, a restraint of trade clause is valid only if it satisfies two conditions. First, the employer must have a legitimate business interest worthy of protection â?? such as trade secrets, confidential client relationships, or proprietary know-how. Second, the restriction must be reasonable in scope, geography and duration. A clause that merely prevents an employee from competing â?? without protecting a genuine business interest â?? will be struck down by the courts as an unenforceable restraint on an individualâ??s right to earn a livelihood.

In March 2024, MOM reaffirmed this position, stating publicly that â??restraint of trade clauses are enforceable only if there are legitimate business interests to protect.â?• The Ministry also noted that courts determine enforceability case by case, based on the specific facts. This means that even a

carefully worded clause can fail if the employeeâ??s role does not actually expose them to the protected information the clause purports to guard.

For a broader understanding of Singaporeâ??s employment pass framework and employer obligations, see our Complete Singapore Employment Pass Guide 2026, which covers the employment framework applicable to foreign professionals.

Three Types of Restrictive Covenants: Non-Compete, Non-Solicitation and Gardening Leave

Employers commonly conflate three distinct types of post-employment restriction, each with different legal standards and enforceability risks.

Non-Compete Clauses

A non-compete clause prohibits a former employee from working for a competitor or starting a competing business within a defined period and geographic area after leaving. These clauses attract the highest judicial scrutiny. Courts examine whether the restriction is proportionate to the actual risk posed. A two-year, region-wide ban on a junior sales executive is unlikely to survive challenge, while a twelve-month restriction on a C-suite executive with access to the companyâ??s entire client database may be upheld.

Non-Solicitation Clauses

A non-solicitation clause prevents a departing employee from approaching the employerâ??s clients, customers or fellow employees for a defined period. Courts generally view these more favourably than outright non-competes, because they restrict specific conduct rather than an employeeâ??s entire livelihood. Nonetheless, an overly broad clause â?? covering all clients the company has ever had â?? can still be invalidated.

Gardening Leave

Gardening leave requires an employee who has given or received notice to remain away from work â?? and away from competitors â?? while continuing to receive their full salary during the notice period. Unlike the first two clause types, gardening leave is generally not a post-employment restraint and tends to be more robustly enforceable. However, it is costly: the employer must continue paying the employee throughout the notice period.

What the Tripartite Guidelines on Restraint of Trade Are Expected to Address

Based on publicly available consultation notes and MOM statements, the tripartite guidelines are expected to establish norms across several dimensions:

- **Salary-level thresholds:** Lower-wage workers are expected to be excluded from enforceable non-compete clauses altogether. The threshold is likely to be aligned with the Local Qualifying Salary â?? which rose to S$1,800 per month on 1 July 2026 for full-time employees, per MOMâ??s Committee of Supply 2026 announcements.
- **Maximum duration:** Guideline norms are expected to disfavour non-compete restrictions beyond twelve months for most roles.
- **Geographic reasonableness:** A Singapore company that operates only domestically would struggle to justify a worldwide non-compete. Geographic scope should correspond to the employeeâ??s actual area of responsibility.
- **Role-based application:** Only employees with genuine access to protectable business interests â?? senior managers, technical specialists or business development personnel â?? should be subject to non-compete clauses.

The guidelines are expected to be legally non-binding. However, Singaporeâ??s tripartite guidelines carry significant practical weight: courts have historically considered them when assessing reasonableness, and MOM has the administrative power to curtail work pass privileges for employers that demonstrably breach tripartite norms.

Employers managing multiple employment pass types should also review our Singapore HR MOM Compliance Calendar 2026, which maps key regulatory deadlines for employers throughout the year.

Why Employers Must Act Before the Restraint of Trade Guidelines Land

Waiting for the guidelines to be published before auditing is a risky strategy. Employers with large workforces may have dozens of legacy employment contracts â?? drafted at different times, by different counsel â?? that contain restraint of trade clauses that are either unenforceable on their face or inconsistent with what the guidelines will require.

An audit conducted before the guidelines are released provides three advantages. First, it identifies which clauses are already legally weak and can be corrected in new contracts going forward. Second, it allows the employer to assess commercial risk: if a senior executive with a proprietary client list is about to depart, knowing in advance whether the non-compete is enforceable allows the company to seek legal remedies confidently. Third, renegotiating clauses before the guidelines are issued is less fraught than renegotiating afterwards, when employees will be better informed of their rights.

For employers managing terminations involving Employment Pass or S Pass holders, our guide on why work pass appeals fail in Singapore covers the documentation and process requirements relevant when an employment relationship ends.

Interaction with the Workplace Fairness Act 2026

The Workplace Fairness Act (WFA), being implemented in phases through 2026 and 2027, introduces statutory protections against retaliation for employees who exercise workplace rights. This interacts directly with restraint of trade enforcement: an employer that attempts to enforce a non-compete against a former employee who had previously raised a WFA-protected grievance risks exposure on two fronts simultaneously â?? the enforceability challenge to the non-compete clause and a retaliation claim under the WFA.

The tripartite guidelines are expected to be drafted with the WFAâ??s anti-retaliation framework in mind. Employers using restraint of trade clauses to disadvantage employees who exercised protected rights will find themselves legally exposed regardless of the technical drafting of the clause.

Employer Audit Checklist: Restraint of Trade Clauses

Before the tripartite guidelines are released, HR teams and legal counsel should work through the following steps:

1. **Map which employment contracts contain restraint of trade clauses** â?? including non-competes, non-solicitations and gardening leave provisions.
2. **Assess salary thresholds:** Identify employees earning below the likely protected-worker floor â?? expect their non-competes to be unenforceable under the forthcoming guidelines.
3. **Review duration and geographic scope** for each clause against the employeeâ??s actual role, seniority and access to protectable business information.
4. **Evaluate the legitimate business interest** for each category of role subject to a non-compete. If the company cannot articulate this specifically, the clause is unlikely to survive challenge.
5. **Update contract templates** going forward to reflect expected guideline norms â?? even before publication, drafting to a higher standard reduces litigation risk.
6. **Consult employment counsel** on existing clauses for your highest-risk departures: executives, senior business development personnel and technical leads holding proprietary information.
7. **Document the business interest being protected** for any employee subject to a non-compete.

MOMâ??s guidance on employment contract obligations is available on the Ministry of Manpower website. The tripartite guidelines â?? when released â?? will be published on the MOM employment practices page.

Consequences of Non-Compliance with Tripartite Guidelines

Non-compliance with tripartite guidelines carries real consequences, even though they are not statutory. MOM has used work pass privilege curtailment â?? restricting an employerâ??s ability to hire foreign workers â?? against companies that breach tripartite guidelines or demonstrate poor employment practices. For businesses that depend on Employment Pass or S Pass talent, this administrative sanction is a significant commercial risk that extends well beyond any individual non-compete dispute.

Courts interpreting the reasonableness of a restraint of trade clause will be able to take guideline norms into account. A clause that clearly violates guideline standards â?? for example, a two-year worldwide non-compete on a mid-level engineer â?? will be far easier for the employeeâ??s counsel to challenge.

Conclusion

Singaporeâ??s tripartite guidelines on restraint of trade clauses in employment contracts will, when published in H2 2026, clarify what is and is not a legitimate and enforceable restriction. For employers, the message is clear: audit your contracts, assess your exposure, and update your templates before the guidelines take effect.

If your business employs foreign professionals on Employment Pass or S Pass and you need guidance on how work pass obligations interact with employment contract management, Singapore Employment Agency â?? the consumer brand of Little Big Employment Agency Pte Ltd (MOM Licence No. 19C9790) â?? can help. For incorporation, corporate secretarial or broader HR structuring needs, our related firm Raffles Corporate Services provides end-to-end support for businesses in Singapore.

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