

Employment & Administrative Law

Deed of Settlement, Termination and Release Upheld as Cessation of Employment by Mutual Agreement

In the recent case of **Christopher Dass a/l Muniandy @ Mathew v Clasquin (Malaysia) Sdn Bhd** dated 3 August 2021 (Award No. 1393 of 2021), the Court upheld that notwithstanding the Deed of Settlement, Termination & Release, the essence and substance of the Deed reflected that it was an instance of a separation by way of agreement on mutually agreed terms.

The claimant (“Christopher Dass”) was the Country Manager of the company (“Clasquin”) and held the highest management position based in Malaysia. Christopher Dass contended that pursuant to a disagreement with another employee Clasquin no longer wanted him in its employment, and he was forced to enter into a Deed of Settlement, Termination and Release (“the Deed”) to end the employment relationship.

Conversely, Clasquin’s contention was that Christopher Dass in his role was responsible for the financial growth of the business under his leadership and governance but was unwilling to adhere to his superior’s instructions who is the Regional Managing Director (Southeast Asia) of Clasquin, failed to react diligently to queries, failed to achieve optimal growth and results given the weak performance of Clasquin over successive years. As such, Clasquin took the view that the relationship between Clasquin and Christopher Dass was not working.

Clasquin thereafter initiated discussions with Christopher Dass inviting him to attend these discussions in France to ascertain the possibility of ending the employment relationship. Pursuant to several discussions this resulted in the execution of the Deed of Settlement on 18 June 2018, where Christopher Dass was paid a sum close to a year’s salary in consideration for the cessation of the employment relationship. As such Clasquin’s case was that there was no dismissal but instead a separation achieved on mutually agreed terms.

Legal Updates

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Integral to the dispute before the Court was whether there was a dismissal at the first instance. Since the fact of dismissal was in dispute, the burden of proof was on Christopher Dass to establish that he had in fact been dismissed by Clasquin. The Court found that the version of the final Deed agreed upon by both parties was pursuant to revisions by Christopher Dass sent via email to Clasquin. The negotiations and revisions itself took place over a period of more than a month, commencing from the time Christopher Dass was invited to France in early May 2018 until its conclusion in June 2018.

In holding in favour of Clasquin, the Industrial Court found that Christopher Dass failed to produce any evidence of the existence of any coercion, threat, duress or inducement by Clasquin that should he refuse to sign the Deed, it would result in his termination of employment. Accordingly, the issue of whether the dismissal was done with or without just cause or excuse did not materialise as there was no dismissal at the first instance.

Clasquin was represented in the instant matter by Suganthi Singam, who is a Partner in our Employment and Administrative Law Practice Group, assisted by Nur Najehah Jalaldin.

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ADMINISTRATIVE LAW MATTERS.**

Immigration

Abolishment of MyTravelPass for Fully Vaccinated Malaysians Planning To Travel Abroad¹

Commencing from 11 October 2021, Malaysians who have been fully vaccinated are permitted to travel abroad not only for official matters but also for tourism following the announcement made by Prime Minister Datuk Seri Ismail Sabri Yaakob on 10 October 2021.

As part of the initiative to curb the spread of Covid-19, fully vaccinated Malaysians are still subject to the following conditions:

1. They are required to undertake the Covid-19 swab test which shows a negative result three days before they return from abroad.
2. They must undergo self-quarantine for 14 days upon arrival in Malaysia. Home quarantine is permitted and the application can be made through the online portal seven to 10 days before they arrive in Malaysia².

Prior to this change, Malaysians who intended to travel abroad could only do so in limited circumstances, that is, emergencies, business trips and official government affairs. The announcement also indicated that the borders remain closed to foreigners unless prior permission has been obtained from the Director General of Immigration.

As part of the initiatives to curb the spread of Covid-19, all travellers from countries who have obtained their entry approvals must be fully vaccinated. They are required to undertake the RT-PCR test upon their arrival and thereafter undergo mandatory quarantine.

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Intellectual Property

Measat Broadcast Network Systems Sdn Bhd v Koo Kok Wee [Kuala Lumpur Civil Suit No. WA-22IP-61-10/2020]

In this recent unreported but precedent-making case, the Kuala Lumpur Intellectual Property High Court had declared that the acts of selling, offering for sale, distributing and supplying streaming television boxes that could provide unauthorised access to media contents would constitute copyright infringement.

The plaintiff (“Measat”) which owns and operates the satellite television services “Astro”, had commenced the above suit against the defendant (“Koo”) for selling EVPAD 3S streaming television boxes which contained the Android operating system and/or applications that allow or provide access to copyrighted works owned by and/or licensed to Measat.

The Court held that as the streaming television boxes provided unauthorised access to Measat’s copyrighted works including films and music without the consent or license of Measat, Koo had infringed upon Measat’s exclusive right of communication to the public (per sections 3 and 13 of the **Copyright Act 1987**) and, furthermore, was punishable under section 36 of the Act.

CONTACT US FOR FURTHER INFORMATION REGARDING INTELLECTUAL PROPERTY MATTERS.

Tax & Revenue

Income tax

The following Rules have recently been gazetted:

- (i) **Income Tax (Deduction for the Costs of Implementation of Flexible Work Arrangements) Rules 2021** — gazetted on 4 October 2021 and deemed to have effect from year of assessment 2020; and
- (ii) **Income Tax (Deduction for Training Costs Under National Dual Training System (NDTS)) Rules 2021** — gazetted on 11 October 2021 and deemed to have effect from year of assessment 2019.

The following public ruling has recently been published on the Inland Revenue Board's official website:

- [Taxation of a Resident Individual Part I — Gifts or Contributions and Allowable Deductions \(Public Ruling No. 5/2021\)](#) – issued on 30 September 2021 to replace Public Ruling No. 8/2020 dated 9 October 2020.

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¹ <https://tinyurl.com/23r4wwnw>.

² <https://tinyurl.com/zam6mwme>.