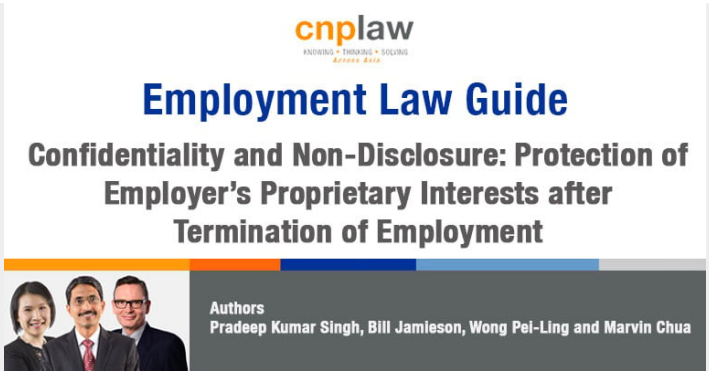
CONFIDENTIALITY AND NON-DISCLOSURE: PROTECTION OF EMPLOYER'S PROPRIETARY INTERESTS AFTER TERMINATION OF EMPLOYMENT

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Category: Employment Law Guide

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(a) Confidential information

An employee has a duty of good faith during the course of employment. This includes an implied duty not to disclose confidential information to persons who are not entitled to receive it and not to make unauthorised use of trade secrets or confidential information for his own benefit.
This obligation of non-disclosure or confidentiality continues after the employee has left the employment of the employer. However, the obligation is limited in scope after termination of employment. Only in so far as the information is a trade secret or is highly confidential in nature so as to amount to a trade secret can the employee who has left the employment be restrained from disclosing or using it.
An employee's employment contract and/or a termination agreement may provide that the duty of non-disclosure or confidentiality in relation to the employer's confidential information survives the term of the employment. A clear definition of confidential information should be included.
For contractual restrictions on disclosure of an employer's confidential information to be enforceable:

- the information must be of such a nature that the employer believes would be injurious to him if it were released;
- the employer must believe that the information is confidential or secret and is not already in the public domain;
- the employer's belief above must be reasonable;
- the information must be judged in the light of the usage and the practices of the particular industry; and
- the employer must limit the dissemination of the information and not encourage its widespread publication.

(b) Duration of a non-disclosure or confidentiality obligation

There is no specified legal limit to the duration of a confidentiality obligation binding on an employee after termination of employment. On an application for an injunction restraining the breach of a non-disclosure or confidentiality obligation, if the court's view was that the protected information had lost its quality of confidence with the passing of time or it was already in the public domain, then it would not grant an injunction restraining disclosure.
If the court took the view that the information ought to continue to be protected but for a limited time, then it could grant an injunction to prohibit disclosure for a specified further period, based on what it considered reasonable in the particular circumstances. A confidentiality or non-disclosure clause would not be void if it

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was for an indefinite period or for a period the court considered excessive, but it would be enforced only for the period the court held was reasonable. In certain circumstances restraint for an indefinite period may be reasonable.

Please note that this section of the Employment Law Guide is a summary provided for general information purposes, aimed at aiding understanding of Singapore's employment law as at the date of writing. It is not exhaustive or comprehensive and reading this memorandum is not a substitute for reading the text of the various statutes to fully understand the extent of the obligations owed. This guide should also not be relied upon as legal advice.

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