Published on 6 May 2025

RESTRICTIVE COVENANTS IN EMPLOYMENT LAW: AN UPDATE

[2025] SAL Prac 11

While the tests for the enforceability of non-competes and non-solicits are trite and established in Singapore and several other common law jurisdictions, the topic continues to generate much interest and unease amongst employers and employees. Various challenges over these clauses continue to be raised in the Singapore courts, most recently involving two well-known tech companies, MoneySmart and Shopee. This article seeks to review and distil several key principles that have arisen since 2018, and explore how these may have an impact on the practical treatment of such clauses in the future.

ANG Ann Liang
LLB (Hons) (University College London);
Associate Director, Wong Tan & Molly Lim LLC.

I. Introduction

1 This article follows from an earlier article.[1] In the earlier article, the learned authors had sought to state the general principles on the enforceability of non-competes and non-solicits (commonly known as "restrictive covenants") as at around December 2018.

2 Since then, there have since been several pertinent judgments from the Singapore courts on this topic.

3 While the tests for enforceability remain generally the same, recent cases have shed further clarity on the application

1 Tay Yong Seng, Ang Ann Liang & Alyssa P'ng, "Restrictive Covenants in Employment Law: When are They Enforceable?" [2018] SAL Prac 17.

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

of the tests to specific instances, and especially in relation to the use of interim injunctions to enforce restrictive covenants.

II. Enforceability of restrictive covenants – the general test

4 The general test remains unchanged. The courts will not enforce restrictive covenants unless they fulfil both these stages:[2]

(a) Stage 1 – the restrictive covenants protect an employer's legitimate proprietary interests and;

(b) Stage 2 – the restrictive covenants are no wider than reasonably necessary to achieve such purposes, and must be reasonable in the interests of the parties and in the public interest.

5 Under Stage 1, examples of legitimate proprietary interests include (a) customer connections; (b) stable and trained workforce; and (c) trade secrets.[3]

6 Under Stage 2, the reasonableness of a restrictive covenant may be analysed along three criteria:

(a) the scope of the activity being restricted, or the "Activity Scope";

(b) the geographical extent of the restriction, or the "Geographical Scope"; and

(c) the duration of the restriction, or the "Temporal Scope".

2 Tay Yong Seng, Ang Ann Liang & Alyssa P'ng, "Restrictive Covenants in Employment Law: When are They Enforceable?" [2018] SAL Prac 17 at paras 1, 7, 26 and 83, citing, amongst other authorities, *Tan Kok Yong Steve v Itochu Singapore Pte Ltd* [2018] SGHC 85 and *Man Financial (S) Pte Ltd v Wong Bark Chuan David* [2008] 1 SLR(R) 663. For a recent restatement of the general test, see *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [23].

3 Tay Yong Seng, Ang Ann Liang & Alyssa P'ng, "Restrictive Covenants in Employment Law: When are They Enforceable?" [2018] SAL Prac 17 at para 8, citing *Lek Gwee Noi v Humming Flowers & Gifts Pte Ltd* [2014] 3 SLR 27 and *Man Financial (S) Pte Ltd v Wong Bark Chuan David* [2008] 1 SLR(R) 663.

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

III. Updates to Stage 1 of the general test – what is a legitimate proprietary interest

A. "Stable and trained workforce" as a legitimate proprietary interest

7 What evidence can an employer adduce to show that it has a legitimate proprietary interest in maintaining a "stable and trained workforce"?

8 In the case of *MoneySmart Singapore Pte Ltd v Artem Musienko*[4] ("*MoneySmart*"), the employer sought to enforce a non-compete against its former employee, to restrain him from working for a competitor.[5] The employer sought to justify the non-compete as being necessary to protect its legitimate proprietary interest in maintaining a "stable and trained workforce".[6]

9 The Singapore High Court rejected the employer's argument. First, the High Court was unable to accept the employer's argument that the industry was a "small and highly consolidated industry".[7] Second, the High Court rejected the argument that the employer "had offered training in the 'specialised field' of the digital insurance industry to build up the [employee's] expertise in that area such that it can be said that the claimant invested much time and resources in the [employee's] training".[8]

10 Similarly, in *Shopee Singapore Pte Ltd v Lim Teck Yong*[9] ("*Shopee*"), the Singapore High Court commented that the relevant industry is not a small and specialised one. The High Court held that:

> That being the case, it would be difficult to say that [the employee's] skillsets are so specialised and hard to replace, such

4 [2024] SGHC 94.
5 *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [2].
6 *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [34].
7 *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [35].
8 *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [37]–[40].
9 [2024] SGHC 29.

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

> that there is a legitimate proprietary interest in maintaining a stable and trained workforce, by restraining [the employee].

11 The corollary appears to be that, in order for an employer to rely on "stable trained workforce" as a legitimate proprietary interest, that employer must be able to show, *inter alia*, that the industry is a small and specialised one, and/or that the company has invested significant time and resources in providing the employee with specialised training such that the employee would be hard to replace.

12 The High Court's pronouncements in both *MoneySmart* and *Shopee* above are welcome. Employers who wish to rely on a "stable and trained workforce" to justify their restrictive covenants should be made to prove the above factors. Otherwise, if an employer can rely merely on bare assertions, the Stage 1 of the general test would be deprived of teeth and rendered academic.

13 Notwithstanding, what if a company does not operate in a small and specialised industry and has not invested significant time and resources training the employee, but nevertheless would suffer a short-term significant loss of labour if a well-connected team leader were to immediately join a competitor on the next day?

14 In *Man Financial (S) Pte Ltd v Wong Bark Chuan*,[10] the Court of Appeal reviewed the theoretical underpinnings of recognising a "stable, trained workforce" as a legitimate proprietary interest, and cited *Cactus Imaging Pty Limited v Glenn Peters*.[11] In that case, the New South Wales Supreme Court (*per* Brereton J) held that:[12]

> Similarly, employees are not property, but, all else being equal, a business with a stable trained workforce will be more attractive to a purchaser and command a higher price than one with a workforce which is unstable, disruptive or poorly trained, just as a loyal and satisfied clientele makes a business more attractive and valuable. In my opinion, staff connection constitutes part of the intangible benefits, which may give a business value

10 [2008] 1 SLR(R) 663.
11 [2006] NSWSC 717.
12 *Cactus Imaging Pty Limited v Glenn Peters* [2006] NSWSC 717 at [55].

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

> over and above the value of the assets employed in it, and thus comprises part of its goodwill. It is amenable to protection by a covenant in a manner similar to customer connection, even in the absence of protectable confidences.

15 In relation to the employee in question, Brereton J also went on to hold that:[13]

> As State Sales Manager, Mr Peters [the employee concerned] gained knowledge about the performance of other sales personnel and was in a position to know their capacities and personalities. Although the evidence does not establish that he knew their terms of employment, nor their remuneration, which might have been confidential, *he was, in effect, the team leader of the state sales team, and as such was in a position to gain and exercise influence over other members of the New South Wales sales team*. Moreover, the members of his team would have in their possession the same type of confidential information as I have found Mr Peters had in his. *The major risk, against which Cactus [the employer concerned] was entitled to guard, was that upon his departure Mr Peters might seek to use his influence, gained in the course of his employment with Cactus, to arrange the defection of his state sales team to a competitor, thus seriously disrupting Cactus' operations, and potentially putting into the hands of a competitor the ability to use confidential information of Cactus, to its detriment.* Thus the covenant did not only protect staff connection, but also operated in conjunction with the remainder of cl 9.1 to protect Cactus' confidential information, in particular its pricing parameters and marketing strategies. [emphasis added]

16 It therefore appears that the main mischief sought to be addressed by the requirement of a "stable and trained workforce" is to prevent sudden disruptions of operations. If the employer can prove that its operations could be disrupted suddenly, should it still be necessary for the employer to prove that it also operates within a small, specialised industry and/or that substantial training was rendered to the employee?

17 It is respectfully submitted that the cases of *MoneySmart* and *Shopee* are not intended to set out exhaustive requirements to prove a legitimate proprietary interest in a "stable and trained

13 *Cactus Imaging Pty Limited v Glenn Peters* [2006] NSWSC 717 at [57], also cited in *Man Financial (S) Pte Ltd v Wong Bark Chuan* [2008] 1 SLR(R) 663 at [119].

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

workforce". Indeed, the High Court in these cases did not state that they were laying down an exhaustive set of requirements. The requirements laid down in *MoneySmart* and *Shopee* may be seen as various legal methods of proving that a company's workforce may be prone to sudden disruptions of operations, but it does not preclude other factors being considered in future cases.

18 What is clear from the above cases, however, is that companies who seek to enforce restrictive covenants on the basis of a "stable and trained workforce" must be prepared to go beyond mere assertions, and provide objective facts and justifications as to why they would suffer disruptions of operations if the restrictive covenants were breached.

B. "Trade secrets" as a legitimate proprietary interest

19 In *Shopee*, the employer sought to justify its non-compete as being necessary to protect the following categories of confidential information: "(a) immediate and long-term growth and business plans; (b) seller and listing management, customer satisfaction and pricing and marketing strategies; and (c) detailed statistics on orders, financial metrics, users and gross merchandise value".[14]

20 The Singapore High Court commented that these were "fairly generic categories".[15] Citing *Herbert Morris, Limited, v Saxelby*,[16] the court noted that such general knowhow "appears to be more akin to the 'general character and principle' type of confidential information", which may not amount to a trade secret meriting protection.[17]

21 The court further noted that, if the employer could rely on such general knowhow, the employer could then use this to

14 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [38] and [69].
15 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [69].
16 [1916] 1 AC 688.
17 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [70]. In the case of *Herbert Morris Limited v Saxelby* [1916] 688 at 703, the English House of Lords had dealt with a matter whereby the documents handed to employees, while highly confidential, were so detailed and minute that it would be "impossible for any employee to carry it away in his head".

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

completely exclude the employee from all the markets in which the employer was operating, even though there were markets which the employee had not worked in and had assumed no responsibilities, or had no specific information about. There would then be serious concerns that such a non-compete would not be reasonable as between parties, or reasonable in the interest of the public.[18]

22 In other words, general assertions of "trade secrets", and references to generic categories of confidential information, will not pass muster. Companies who seek to justify their restrictive covenants on the basis of trade secrets, should take care to plead, with sufficient specificity, the relevant trade secret or confidential information that the employee will take away with him/her.[19]

C. *Updates to the rule in* Stratech Systems Ltd v Nyam Chiu Shin *[2005] 2 SLR(R) 579*

23 It is also apposite at this juncture to reiterate the rule in *Stratech Systems Ltd v Nyam Chiu Shin*[20] ("*Stratech*") which continues to be good law in Singapore[21]. It has been applied as follows:

(a) Where there is already a confidentiality clause in an employment agreement to protect confidential information, the employer may not be able to justify

18 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [71].

19 Although, in most cases, this is unlikely to raise a practical issue as "trade secrets" rarely constitute justification for restrictive covenants, given the rule in *Stratech Systems Ltd v Nyam Chiu Shin* [2005] 2 SLR(R) 579. This is covered at paras 23–26 below.

20 [2005] 2 SLR(R) 579.

21 Tay Yong Seng, Ang Ann Liang & Alyssa P'ng, "Restrictive Covenants in Employment Law: When are They Enforceable?" [2018] SAL Prac 17 at paras 17–22. While the rule in *Stratech Systems Ltd v Nyam Chiu Shin* [2005] 2 SLR(R) 579 ("*Stratech*") has been subject to judicial commentary in subsequent High Court cases as well as academic commentary (see, *eg*, *Centre for Creative Leadership (CCL) Pte Ltd v Byrne Roger Peter* [2013] 2 SLR 193 at [92]), it remains good law in Singapore as laid down by the Singapore Court of Appeal. A full commentary on the rule in *Stratech*, and whether it should remain applicable for future cases despite its criticisms, is beyond the scope of this article.

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

the restrictive covenant on the basis of protecting "trade secrets".[22]

(b) Where there is already a non-solicit in an employment agreement that protects customer connections, the employer may not be able to justify the non-compete on the basis of protecting "customer connections".[23]

24 More recently, in *Shopee*, the Singapore High Court confirmed the general application of the rule in *Stratech*, such that it is not limited only to "customer connections" and "trade secrets" as legitimate proprietary interests.[24]

25 In that case, a question arose as to whether the employer can justify a non-compete on the basis of its interests in a "stable and trained workforce", when there already exists a separate clause restraining the employee from soliciting other relevant employees of the employer ("Employee Non-Solicit").[25] The court commented that the rule in *Stratech* may apply to invalidate the non-compete in this regard, since the Employee Non-Solicit already provided for the maintenance of a "stable and trained workforce" for the employer.[26]

---

22 *Man Financial (S) Pte Ltd v Wong Bark Chuan David* [2008] 1 SLR(R) 663 at [92]; *Stratech Systems Ltd v Nyam Chiu Shin* [2005] 2 SLR(R) 579 at [44]–[50]. In this regard, it is arguable that even in the relatively rarer instances where there are no express confidentiality clauses in the employment agreement, there are still implied duties of confidentiality at law between an employer and an employee – see, *eg*, *Asia Petworld Pte Ltd v Sivabalan s/o Ramasami* [2022] 5 SLR 805 at [26] and [41]. Such implied duties of confidentiality may well trigger the rule in *Stratech*, which could mean that a company may almost never be able to justify its restrictive covenants on the basis of "trade secrets" alone. A full commentary on this topic is beyond the scope of this article.

23 *Man Financial (S) Pte Ltd v Wong Bark Chuan David* [2008] 1 SLR(R) 663 at [92]; *HT SRL v Wee Shuo Woon* [2019] 5 SLR 245 at [76] and [77].

24 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [64].

25 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [8] and [65].

26 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [65].

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

26 Even though the rule in *Stratech* has had its criticisms,[27] *Shopee* confirms that the rule continues to remain good law in Singapore.

IV. Updates to Stage 2 of the general test

A. Activity Scope and Geographical Scope – need for close connection between restriction and pre-termination work done by employee

27 In *HT SRL v Wee Shuo Woon*[28] ("*HT SRL*"), the Singapore High Court held that the restricted activity must be one for which there is a "*close connection* between the restriction and the work done by the employee prior to leaving" [emphasis added].[29] This "close connection" test is similarly affirmed in *MoneySmart*.[30]

28 In addition to the Activity Scope, the court in *MoneySmart* also affirmed that the "close connection" test applies to the Geographical Scope as well.[31]

B. Cascading clauses

29 Cascading clauses are clauses which contain a variety of durations, geographical scopes or activity scopes, usually drafted by employers in the hope that a court would enforce at least one

27 See, *eg*, *Centre for Creative Leadership (CCL) Pte Ltd v Byrne Roger Peter* [2013] 2 SLR 193 at [92] and *Lek Gwee Noi v Humming Flowers & Gifts Pte Ltd* [2014] 3 SLR 27 at [70] and [71].

28 [2019] 5 SLR 245.

29 *HT SRL v Wee Shuo Woon* [2019] 5 SLR 245 at [80], citing Alexandra Kamerling& Chris Goodwill, *Restrictive Covenants under Common and Competition Law* (Sweet & Maxwell, 6th Ed, 2010) at p 184. The court also held that there is an additional criterion to be met, *ie*, "the employer may only protect himself from activities by his employee which might reasonably affect the customer connection which has been built up": *HT SRL v Wee Shuo Woon* [2019] 5 SLR 245 at [80].

30 *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [45]. In that case, the court found that there was at most only a very tenuous connection between the restriction (against engaging with any business which provides online financial product comparison services) and the employee's work (digital insurance-related and other matters).

31 *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [47]–[51].

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

permutation of the clause, including by use of the "blue pencil" test.[32]

30 An example of a cascading clause is as follows:

> Restraint Period means, from the date of termination of your employment:
>
> (a) 15 months; OR
>
> (b) 13 months; OR
>
> (c) 12 months

31 Cascading clauses appear to have been accepted in jurisdictions like Australia.[33] Historically, however, the Singapore courts have disapproved the use of cascading clauses. In *Lek Gwee Noi v Humming Flowers & Gifts Pte Ltd*,[34] the High Court commented that using the "blue pencil" test to sever permutations in a cascading clause, in order to save that cascading clause, may have an "*in terrorem* effect" on employees.

32 Recently in *MoneySmart*, the High Court expressly affirmed the above and refused to save a cascading clause. The court noted that that cascading clause cannot be said to be reasonable as between the parties or in the interests of the public:[35]

> I observe that the clause has indeed been drafted in a cascading manner which appears to be calculated to accommodate, or even invite, the court to apply the doctrine of severance and arrive at the longest permissible restraint period. As the court noted in *Lek Gwee Noi* at [197], a clause containing cascading covenants 'leaves the vulnerable employee uncertain as to which cascading restriction binds him in law until the issue is actually determined by a court'. *To that extent, such a covenant would have an in terrorem effect on a reasonable employee in the defendant's position.* Further, [the sub-clause] is plainly unjust in trying to impose the prohibitions in the Non-Compete Clause for three months, even if 'a court of competent jurisdiction

---

32 See also Tay Yong Seng, Ang Ann Liang & Alyssa P'ng, "Restrictive Covenants in Employment Law: When are They Enforceable?" [2018] SAL Prac 17 at paras 90–95.

33 See, *eg*, *Hanna v OAMPS Insurance Brokers Ltd* [2010] NSWCA 267 at [17] and *Steadfast IRS Pty Ltd v Mesuria* [2020] 147 ACSR 499 at [105].

34 *Lek Gwee Noi v Humming Flowers & Gifts Pte Ltd* [2014] 3 SLR 27 at [197].

35 *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [56].

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

> determines that any restriction in [the Non-Compete Clause] is unenforceable' for a period of six or 12 months. There is simply no room for [the sub-clause] to operate if the Non-Compete Clause is determined to be unenforceable for such a period. *It appears that the claimant will have multiple bites of the cherry in relation to determining the duration of the Non-Compete Clause. The counsel for the claimant agreed as much at the hearing on 8 March 2024. This is not fair to the defendant. Thus, for these reasons, the Non-Compete Clause cannot be said to be reasonable as between the parties or in the interests of the public.* [emphasis added]

C. Election to enforce smaller part of clause, as opposed to severance of offending part of clause

33 Related to the above, there was an issue raised in *MoneySmart* as to whether an employer can, instead of relying on the doctrine of severance and the "blue pencil" test, merely elect to enforce certain parts of a restrictive covenant. This could achieve the same outcome without engaging the doctrine of severance.

34 In other words, despite, for example, a wide geographical restriction, is it open to a claimant employer to elect only to enforce the restrictive covenant as to certain specific jurisdictions only, in order to salvage a restrictive covenant with an otherwise unreasonably wide geographical scope? There are suggestions from a High Court decision in *Solomon Alliance Management Pte Ltd v Pang Chee Kuan*[36] that this is possible.[37]

---

36 [2019] 4 SLR 577.

37 See, *eg*, *Solomon Alliance Management Pte Ltd v Pang Chee Kuan* [2019] 4 SLR 577, where the court held, at [109]:

> In terms of the geographical scope, the Defendant argued that the scope of cl 11(b)(i) which extended to Asia, was too wide to be reasonable since he was Singaporean and had only worked in Singapore. *However, the Plaintiff's case was confined to the Defendant's sale of products in Singapore on behalf of other entities. That cl 11 prohibited the Defendant from engaging in competing business in Asia, and not just Singapore, was of little relevance in the present case given that the relevant events which the Plaintiff alleged as constituting breach were events that occurred in Singapore.* [emphasis added]

However, in that case, the court dealt with restrictive covenants which operated during the currency of the contract, and not post-termination. The considerations are likely to be different in relation to post-termination restrictive covenants.

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

35 However, the High Court in *MoneySmart* held that such "election" was not possible:[38]

> I digress to first address the related question of whether the claimant can elect to enforce certain parts of the Non-Compete Clause which, when put together, are reasonable. While this approach reaches the same outcome, it does not engage the doctrine of severance. *In the event that a covenant is found to be too wide, it is not open to the employer to argue that he will not seek to enforce the unreasonable parts of the covenant:* see R Chandran, Employment Law in Singapore (LexisNexis, 6th Ed, 2019) at para 3.61. This directly deals with the claimant's position that it seeks to enforce the Non-Compete Clause only in respect of Singapore and Hong Kong … *It is plainly not open for the claimant to specify which countries in which it wishes to enforce the trade restriction within the much wider geographical scope.* [emphasis in original omitted; emphasis added in italics]

36 In making its decision to reject both the severance and "election" arguments, the High Court took into account the underlying policy considerations to prevent abuse on the part of the employer. The court held:[39]

> Fair play is a cardinal principle in construing an employment contract, *especially when the employer is in an advantageous position compared to the employee who has not much choice but to sign the employment contract on an as-is basis*. [emphasis added]

37 The High Court also held that it is "vital that trade restraint clauses are drafted precisely, clearly and unequivocally with respect to the scope of the work of each employee".[40]

38 The holdings in *MoneySmart* are a welcome clarification of the law. It is also respectfully submitted that *MoneySmart* reflects the reality that it is very often the case that an employee has little bargaining power and cannot change the terms of his agreement.

---

38 *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [60].

39 *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [61]. See also *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [63] wherein the court held that it "would be an endorsement of the abusive process of imposing unreasonable restraints in employment contracts" to allow the doctrine of severance to save an exceedingly wide restrictive covenant.

40 *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [63].

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

Such an employee should not be deprived of the protections of the law through clever drafting by employers.

39 However, this raises a question as to whether the above considerations apply in some situations (albeit rare), where an employee has equal if not more bargaining power compared to an employer.

40 Consider an extreme example whereby the employee specifically negotiated the activity, geography and length of the restriction in his restrictive covenants, with the benefit of legal advice. In exchange for the specifically negotiated restrictive covenants, the employer agreed to pay substantial additional sums to the employee (which they would not have done if the employee had not agreed to the restrictive covenants). Further, the employee also agreed to accept the reasonableness of the covenants and waived the right to challenge the covenants in court.

41 Whether the holdings of the High Court in *MoneySmart* and the other preceding cases would apply with equal force to the above example remains to be seen. There may be questions of estoppel or fairness which directly conflict with the policy of the restraint of trade doctrine, and the courts may eventually have to decide which one prevails. In that regard, there may also be policy considerations for the court not to engage in a minute analysis as to how much bargaining power each employee has, in the context of a specifically and carefully negotiated agreement.

V. Practical issues regarding injunctions to enforce restrictive covenants

42 This article will also discuss practical issues in litigation over restrictive covenants.

A. Applicability of the rule in RGA Holdings International Inc v Loh Choon Phing Robin *[2017] 2 SLR 997*

43 Before the case of *Shopee* was decided, there appears to have been some uncertainty as to the application of the

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

rule in *RGA Holdings International Inc v Loh Choon Phing Robin*[41] ("*RGA Holdings*").

44 In *RGA Holdings*, the Singapore Court of Appeal noted that "[w]hen a defendant is about to breach, or has already breached, a negative covenant in a contract, *an interim prohibitory injunction will readily be granted to restrain a prospective breach or a further breach, as the case may be*" [emphasis added].[42] In this regard:[43]

> … where the defendant is about to breach, or has already breached, a negative covenant in a contract; the court in such a case does not ask itself whether there is a serious question to be tried and whether the balance of convenience is in favour of granting such an interim injunction. …
>
> …
>
> … It is for this reason that an injunction will only be refused if a defendant shows hardship over and above that which results from having to observe the contract.

45 In other words, the rule in *RGA Holdings* suggests that where an employee is about to breach his restrictive covenants (which are arguably negative in nature), the courts should readily grant an interim prohibitory injunction without needing to apply the usual test for interim injunctions.[44] This could be taken to mean that, for the purposes of interim injunctions, the courts need not even analyse in detail whether the relevant restrictive covenants are enforceable at law.[45]

46 Most recently in *Shopee*, however, the High Court made clear that the rule in *RGA Holdings* may apply only *after* the

---

41 [2017] 2 SLR 997.
42 *RGA Holdings International Inc v Loh Choon Phing Robin* [2017] 2 SLR 997 at [32].
43 *RGA Holdings International Inc v Loh Choon Phing Robin* [2017] 2 SLR 997 at [33]. See also *RGA Holdings International Inc v Loh Choon Phing Robin* [2017] 2 SLR 997 at [42]–[44].
44 That is, serious issue to be tried and balance of convenience.
45 See also *Pacific Prime Insurance Brokers Singapore Pte Ltd v Lee Suet Fern* [2022] SGHC 86 at [22], wherein the court was of the view that the "reasonableness and validity of the non-solicitation clause should not be assessed at the interlocutory stage". See also *Robin Duane Littau v Astrata (Asia Pacific) Pte Ltd* [2011] SGHC 61 at [30].

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

applicant can show that the restrictive covenant is valid and enforceable under restraint of trade principles:[46]

> It should be borne in mind that the principles in *RGA Holdings* are only applicable where an applicant has shown that the respondent is about to breach, or has already breached, a negative covenant. *In the context of a restraint of trade clause, the applicant must first show that the restraint of trade clause is valid and enforceable, in that it protects a legitimate interest of the applicant and in addition is reasonable in the interests of the parties and the public. Where an applicant is unable to show that there is a serious question that the restraint of trade clause is valid and enforceable, it is highly doubtful that the applicant could show that the respondent has breached or is about to breach the negative covenant.* [emphasis added]

47 The implications of the High Court's holdings are significant. Where a party seeking to enforce a restrictive covenant that is obviously too wide and unenforceable, an employer cannot invoke the rule in *RGA Holdings* to nevertheless seek an interim injunction to enforce the restrictive covenant.

B. Evidential thresholds for interim injunctions

48 Recent cases are also timely reminders that employers who seek to enforce restrictive covenants should take care to particularise and substantiate the evidence relied upon, in relation to both Stage 1 (legitimate proprietary interests) and Stage 2 (reasonable restrictions) of the general test, as well as the potential losses to be suffered by the employer.

49 In this regard, the High Court in *Shopee* commented that it is not sufficient for the employer to make mere general assertions of loss to support its argument that damages are not an adequate remedy. In fact, the failure to try and particularise losses could be an instance of the employer being unclear of what its losses are, as opposed to an actual conceptual difficulty in quantifying losses.[47]

---

46 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [29].
47 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [87].

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

50 In *Shopee* itself, the employer asserted losses such as loss of customer connections and goodwill, and disruptions to the employer's workforce.[48] The court held:[49]

> *In my view, it appears that a large part of the reason why [the employer] presently has difficulty assessing what damages could adequately compensate it for its losses is that it has framed its potential losses in very generic terms. For example, it does not set out which potential client or area of business it could lose.* If [the employer] is able to do this, it does not seem that it would be impossible to derive an estimate of the value of the business lost by reason of [the employee] working for [the competitor] during the one-year restraint period. Counsel for Shopee explained that the potential losses are framed generically, because the concern is that [the employee's] knowhow can be used by [the competitor] to gain an unfair advantage and it is difficult to say how [the employee] might use the information. That being the case, it appears that the issue is not that there is conceptual difficulty in quantifying the loss, but that [the employer] is not clear what would be its loss, a point which counsel for [the employer] accepts. [emphasis added]

C. *Refusal to provide undertakings alone may not justify claims for an interim injunction*

51 Where an employer suspects an ex-employee of having breached his/her restrictive covenants, it is common for employers to write to the ex-employee to demand compliance with the restrictive covenants.

52 If the ex-employee fails to reply or satisfactorily provide the relevant undertakings, is that alone sufficient to give rise to a perception that the employee is threatening to breach the undertakings, hence justifying an application for an urgent interim injunction?

53 The courts have readily granted an injunction where the employee has shown a proclivity, and threatened, to breach the

48 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [86].
49 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [87].

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

restrictive covenants.[50] However, the refusal to provide such undertakings may not, in and of itself, amount to evidence of a proclivity to breach restrictive covenants.

54 In *Shopee*, the employer sought to rely on the employee's refusal to provide undertakings, as evidence of a proclivity to breach the relevant restrictive covenants. However, the High Court noted that these undertakings do not add anything legally, given that the employee had already committed to the restrictive covenants under the employment agreement documents.[51] This, coupled with the employee having gone on affidavit to state that he will not breach the relevant restrictive covenants, meant that the employer had not even shown a serious question to be tried that the employee had or was about to breach the relevant restrictive covenants.[52]

55 The above presents a cautionary tale against rushing to apply for an injunction just because an employee has failed to provide the relevant undertakings. The courts have taken the position that something more is required – there should be some positive evidence that the employee has or is threatening to breach the restrictive covenants.[53]

D. Enforceability of restrictive covenant may be assessed even at balance of convenience stage

56 The High Court in *Shopee* affirmed that, in assessing balance of convenience, regard can be had to the relative strength

50 *Heller Factoring (Singapore) Ltd v Ng Tong Yang* [1993] 1 SLR(R) 495 at [17]; *Tan Kok Yong Steve v Itochu Singapore Pte Ltd* [2018] SGHC 85 at [109].
51 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [74].
52 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [75].
53 See, *eg*, *Heller Factoring (Singapore) Ltd v Ng Tong Yang* [1993] 1 SLR(R) 495 at [17], where the court noted that the employee had issued a tacit assertion of entitlement and threat to poach customers, and regarded it as "fair game" to poach his employer's customers. See also *Tan Kok Yong Steve v Itochu Singapore Pte Ltd* [2018] SGHC 85 at [109], where the court noted that the employee had taken steps to breach the restrictive covenants and also regarded poaching customers as "fair game". The court granted injunctions in both these cases.

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

of the parties' case[54] (notwithstanding that this is also usually considered at the first stage of the test for interim injunctions).

57 The corollary is that an employer with exceedingly wide restrictive covenants should be cautioned that even if they do manage to establish a serious issue to be tried, the width of the covenants could still be relied on at the balance of convenience stage to militate against the grant of any interim injunction.

E. *Injunctions to enforce restrictive covenants* – ex parte *or* inter partes?

58 It is noteworthy that in both cases of *Shopee* and *MoneySmart*, the employers had sought *ex parte* interim injunctions.[55]

59 The High Court in *MoneySmart* cautioned on material non-disclosure in relation to such *ex parte* injunctions to enforce restrictive covenants:[56]

> In my view, the non-disclosure of the actual scope of the Non-Compete Clause *vis-à-vis* the scope of the interim injunctions sought is disconcerting. *It is material that the claimant was seeking to enforce only part of the Non-Compete Clause since the geographical scope of the interim injunctions sought was narrower than what the clause prescribed. This gives rise to questions of whether the claimant is permitted to do so or whether severance operates to allow this outcome … However, these questions did not arise at the ex parte hearing because of the non-disclosure of this issue by the claimant. Plainly, this issue, which pertains to the very legal basis of the interim injunctions sought, should have been highlighted. I must stress that the interim injunctions would be vulnerable to be discharged due to this non-disclosure.* [emphasis added]

60 In almost all conceivable cases of an employer seeking to enforce post-termination restrictive covenants, the enforceability of such covenants would be in issue. It may well be that the courts would decline to enforce such injunctions until they have

54 *Shopee Singapore Pte Ltd v Lim Teck Yong* [2024] SGHC 29 at [92].
55 Now known as injunctions without notice.
56 *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [99].

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.

heard the employee's arguments.[57] This begs the question then as to whether it could possibly be safer for employers to seek such injunctions on an *inter partes* than an *ex parte* basis.

VI. Concluding thoughts

61 The enforceability of non-competes and non-solicits continues to be relevant in today's context, especially given that employees may be able to buy out their notice periods and start work for a competitor the very next day.[58] Indeed, the Singapore Ministry of Manpower has announced plans to develop and release guidelines on such clauses. How these guidelines would affect the substantive law (on enforceability) and procedural law (on applications for injunctions) remains an eagerly anticipated topic to be explored subsequently.

57 As was the case in *MoneySmart Singapore Pte Ltd v Artem Musienko* [2024] SGHC 94 at [2].

58 See s 11(1) of the Employment Act 1968 (2020 Rev Ed). See also Tay Yong Seng, Ang Ann Liang & Alyssa P'ng, "Restrictive Covenants in Employment Law: When are They Enforceable?" [2018] SAL Prac 17 at paras 9–22.

© 2025 Contributor(s) and Singapore Academy of Law.
No part of this document may be reproduced without permission from the copyright holders.