

SHARING EMPLOYMENT INFORMATION

WHEN IS IT PERMISSIBLE UNDER THE COMPETITION ORDINANCE?

To attract and hire the best talent, employers will typically try to find out what the latest market trends are, so they can put together a competitive package for prospective employees. Often times this is harmless, but when an employer (or human resources professionals) speaks to other employers about what to offer, that risks contravening the competition rules. In this briefing, we discuss ways to minimise this risk in view of the recently published [advisory bulletin](#) by the Hong Kong Competition Commission (HKCC).

Sharing employment information in joint employer-employee negotiations

On 29 August 2022, the HKCC issued an advisory bulletin on joint negotiations between groups of employers and groups of employees. In line with its [2018 advisory bulletin](#), the HKCC maintains the view that employers are competitors for labour, and should therefore avoid sharing information on what they intend to offer their employees with other employers.

However, in contrast with the 2018 advisory bulletin, the HKCC now notes that industry-wide joint negotiations on employment terms may have a positive impact for employees, leading to improved compensation and conditions for employees. In light of this, HKCC indicated that it has no intention to pursue a case against employers for participating in these joint negotiations, provided that:

- (1) the need for the employers to negotiate jointly with employee bodies is justified given the industry characteristics;
- (2) the conduct is, both in nature and purpose, aimed at improving relevant employment conditions; and
- (3) an employee body is a genuine participant in the joint negotiation process.

The HKCC specified that this would apply to the following conduct:

- (1) An association or group of employees issuing compensation recommendations (including a recommendation to increase or decrease pay by a particular percentage) which are the result of these joint negotiations; or
- (2) An association or group of employees sharing expectations about future compensation where necessary in preparing for or conducting joint negotiations.

What this means for employers

This bulletin provides some comfort to employers in industries where joint negotiations are common place. However, employers should still take note that the conditions set out above apply to a very narrow set of circumstances only. For example, the conditions would not be satisfied if:

- The group of employees are compelled to participate in these joint negotiations (i.e. not a genuine participant);
- The purpose of the joint negotiation is for the employers to collectively reduce the quality of working conditions for employees in the industry; or
- Information on future employment terms and conditions or compensation recommendations is shared outside of the context of joint negotiations.

As with other business strategies or commercial terms, businesses should independently determine the recruitment policies and the employment terms and conditions they adopt.

Businesses should not lose sight of the fact that the HKCC will treat them as competing against other employers for labour, even if they are not competitors in the marketplace. From that perspective, what a business intends to offer prospective employees (e.g. pay, leave, training, working hours and other benefits) could be categorised as competitively sensitive information. Sharing this type of information is rarely advisable.

Businesses (including human resources professionals) should think twice before sharing such information with other employers. In the context of joint employer-employee negotiations, employers should further consider whether the three conditions set out above are satisfied. The Dos and Don'ts below should help reduce competition law risk in Hong Kong. If in doubt, seek legal advice before sharing employment information with other employers.

Dos and Don'ts in joint employer-employee negotiations

Dos	Don'ts
<ul style="list-style-type: none"> Consider the industry characteristics and whether joint negotiations are justified 	<ul style="list-style-type: none"> Do not agree to participate just because your competitors are participating or are pressuring you to participate, or because you fear that you will miss out
<ul style="list-style-type: none"> Ask the association or other employers what the purpose of holding the joint negotiations is 	<ul style="list-style-type: none"> Do not attend joint negotiations if the purpose of the negotiations is not to improve employment conditions
<ul style="list-style-type: none"> Assess whether the employees genuinely want to participate in the joint negotiations 	<ul style="list-style-type: none"> Do not attend joint negotiations if the employees have been directly or indirectly compelled to attend the negotiations against their wishes
<ul style="list-style-type: none"> If you are asked to share information on your future hiring practices, before sharing that information, consider the reason and context in which it is sought 	<ul style="list-style-type: none"> Do not share the requested information if it is not necessary to prepare for or conduct the joint negotiations
<ul style="list-style-type: none"> Ask whether the information that is shared will be collected via a third party, aggregate and anonymise 	<ul style="list-style-type: none"> If, after making enquiries, you find out that no steps will be taken to prevent revealing to all employers who is offering what, do not share the information
<ul style="list-style-type: none"> If compensation recommendations are to be given after the joint negotiations, be clear that they are merely suggested 	<ul style="list-style-type: none"> Do not require any other employer to adopt a certain figure, or to increase/decrease compensation by a certain percentage
<ul style="list-style-type: none"> If you receive or are asked to share any competitively sensitive information you do not think should be shared, proactively object to providing or receiving the information and seek legal advice as soon as practicable 	<ul style="list-style-type: none"> Do not ignore or do nothing after receiving another employer's employment information, as it may amount to tacitly approving the conduct or using that information for your purposes

CONTACT



NATALIE YEUNG
PARTNER
T: +852 2901 7275
E: natalie.yeung@slaughterandmay.com



ALEXANDER LEE
COUNSEL
T: +852 2901 7202
E: alexander-pc.lee@slaughterandmay.com



YVONNE NGAI
LEGAL ASSISTANT
T: +852 2901 7324
E: yvonne.ngai@slaughterandmay.com

London

T +44 (0)20 7600 1200
F +44 (0)20 7090 5000

Brussels

T +32 (0)2 737 94 00
F +32 (0)2 737 94 01

Hong Kong

T +852 2521 0551
F +852 2845 2125

Beijing

T +86 10 5965 0600
F +86 10 5965 0650

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