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Monitoring employee emails in Singapore

In Singapore, whilst there is no case law relating to an employer's monitoring of employee's communications, the Personal Data Protection Act regulates the collection, use and disclosure of personal data by organisations in Singapore.

The Singapore Personal Data Protection Act (the "Act") which came into full effect mid-2014 was introduced to recognise and balance the right of individuals to protect their personal data and the needs of organisations to collect, use and disclose personal data as would be reasonable and appropriate in the circumstances.

In addition, while there is no statutory / constitutional right to privacy in Singapore, there is a law of confidentiality which covers a wide range of data (e.g. telephone conversations and/or bills and receipts, communications between husband and wife, and even photographs of a celebrity wedding). However, neither the Act nor the law of confidentiality expressly deals with monitoring by an employer of an employee's emails on its IT systems.

Ultimately the question of whether monitoring can be carried out will likely come down to contractual agreement between the employer and its employees. In Singapore, it is not uncommon for companies to have signed agreements in place which afford them the right to monitor their employees' communications on company IT systems, as a protective measure. This is particularly so with businesses within the professional and finance sectors. In practice, companies generally either check samples of employee emails every three to six months where an employee's conduct or performance is in question or as a last resort where an employee is the subject of an investigation.

The *Barbulescu* decision has not been considered or applied by the Singapore Courts and the position in relation to an employer's right to monitor employee emails remains untested. In our view, given the lack of statutory right to privacy in Singapore and Singapore's pragmatic pro-commerce approach, where an employer can establish a business need to monitor employee communications on company IT systems and the monitoring is reasonable, the courts are unlikely to interfere.