

## Exercising restraint: team moves, restrictive covenants and injunctions June 2012

The English High Court has handed down a wide-ranging decision on team moves, restrictive covenants and injunctions: *CEF Holdings Ltd v Complete Electric Solutions Ltd*.

The judgment contains a number of practical points that employers in Hong Kong should pay heed to, particularly those faced with team moves (and, perhaps even more importantly, to those drawing up employment contracts purporting to restrain employees).

The case arose out of the departure of over 20 managers at CEF to a competing business in the electrical wholesale business. CEF had applied for a number of emergency court orders to restrict the former employees' activities. In reviewing the grant of the injunctions, the High Court made the following findings:

- Employee recruitment restriction clauses in the defendants' contracts of employment, purporting to prevent them from soliciting other employees to join them, were unenforceable because they were too wide: they should have been limited to employees with whom the defendants had had contact, and to those of a particular level of seniority. Also, most of the defendants had to give only one week's notice to terminate their contracts, undermining the argument that employees were so important and difficult to replace that recruitment restriction was justified.
- Non-compete clauses were also too wide: they prevented employees from having any interest in a competing company so would in theory prevent an employee from owning a single share in a public company. The restrictions were also unnecessary - customer connections were adequately protected by clauses preventing non-dealing and non-solicitation of customers.
- The need for recruitment and non-compete restrictions was undermined by the fact that the two senior defendants, who had been given written contracts only comparatively recently,

did not have the clauses in their contracts of employment.

- The injunction sought was too broad as well: there was no geographical restriction limiting it to the area where the former employee worked; and employees were restricted from supplying any services with which they had been concerned during any part of their employment - even if this was many years earlier and even if CEF was no longer involved in those services.
- The claimant was not entitled to stop a competitor from taking a "ready-made" team - employees are allowed to take their close connections and shared skills with them when they move jobs. In any event, the defendants in this case were spread right across the UK, each with a separate geographical focus. Confidential information could have been protected by a clear confidentiality covenant.
- CEF was not entitled to a "springboard" injunction to prevent ex-employees competing - this type of injunction is reserved for situations where an unfair "head start" has been gained as a result of a conspiracy or other wrongful conduct.

The Court's attempt to reign in the use of injunctions applied for without the other side being given full or any notice should also be noted by Hong Kong practitioners. Such applications should be made only in exceptionally urgent circumstances or where there is a real risk that giving notice would enable the defendants to take steps to defeat the purpose of the injunction (or by reason of the need for confidentiality). In any event, the claimant must give full and frank disclosure.

If you would like further information on any aspect of this note please contact a person mentioned below or the person with whom you usually deal:

**Allan Leung, Partner**  
allan.leung@hoganlovells.com  
+852 2840 5061

[www.hoganlovells.com](http://www.hoganlovells.com)

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**Timothy Hill, Partner**  
timothy.hill@hoganlovells.com  
+852 2840 5023

**Mark Lin, Partner**  
mark.lin@hoganlovells.com  
+852 2840 5091

**Damon So, Partner**  
damon.so@hoganlovells.com  
+852 2840 5018

**Chris Dobby, Partner**  
chris.dobby@hoganlovells.com  
+852 2840 5629