

# RAVENS CROFT & SCHMIERER

Solicitors Notary Rechtsanwälte

## SPRINGBOARD INJUNCTION: HOW TO PROTECT YOUR BUSINESS

### 1. Legal Principles

Springboard injunctions serve to eliminate or at

THE UNFAIR 'HEAD START'  
GAINED BY A FORMER EMPLOYEE  
USING UNLAWFUL MEANS,  
TYPICALLY THROUGH THE ABUSE  
OF CONFIDENTIAL INFORMATION

least reduce economic loss to an employer due to obtained from the erstwhile employment. With its scope further extended in *QBE Management Services (UK) Ltd v Dymoke & Others [2012] IRLR 458*, a springboard injunction can also apply to prevent employees from taking advantage in earlier breaches of fidelity and fiduciary duties bound by their preceding employment contracts. For instance, inciting en masse exodus from the original company to join a rival company during employment, or using the confidential information obtained from the previous position to transfer customers to the new venture. Once an injunction is granted by the court, the former employee will be prohibited from operating the business with an unlawful

'head start' until a specified time. However, the springboard relief aims not to punish the employee, but merely to provide fair and just protection to the previous employer on an interim basis. It should have no more far-reaching effect than to simply restore the competitive position of the former employer they should be at. These principles are also adapted in the Hong Kong courts.

### 2. Application

#### (a) The applicant's responsibilities

To apply for a springboard injunction, there are actually relatively high hurdles for the plaintiff to overcome. The burden is mainly on the employer who has to specify the precise nature, relation and period of the unfair advantage enjoyed by the former employee. For instance, it needs to be spelt out how the confidential information is used to obtain unfair advantages, how long should the injunction last and why.

#### (b) When to apply

Springboard relief must be sought at a time when any unlawful advantage is still being enjoyed by the employee, and that it shows a tendency to continue unless restrained. An injunction will not be granted if the 'head-start' is barely

ephemeral or short-term; or that the former employee has offered undertakings; or that a monetary award to be paid by the employee or the new employer to the previous employer will already be adequate as the remedy for the wrongdoings.

### **(c) Be Aware of Cost Consequences**

It is advised to seek legal advice before pursuing an application so as to avoid unnecessary cost consequences. If the application is unsuccessful, the employer may even be ordered to compensate the other party for their monetary and time cost throughout the legal process.

### **3. Key Takeaway**

The advice to the employers is to consider incorporating appropriate post-termination restrictive covenants (PRCs) in employment contracts, or at least to obtain an undertaking, for regulating the employees' conduct. Although not every piece of information is trade secret, employers shall consider imposing contractual restrictions to the employees especially who with greater access to the imperative confidential information and thus higher potential in taking the unfair 'head start'. Even in the worst situation, the PRCs and the undertaking can also serve as a compelling justification at court. Again, it is prudent to consult for professional suggestions while drafting these contractual restrictive covenants regarding the enforceability and reasonableness.

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