Restraint of Trade in Singapore: Employment vs. Sale of Business

Restraint of trade in the employment context

The Singapore position on restraint of trade in the employment context was settled authoritatively by the Court of Appeal in Man Financial (S) Pte Ltd v Wong Bark Chuan David [2008] 1 SLR(R) 663 ("Man Financial"), and again affirmed by the same court in Smile Inc Dental Surgeons Pte Ltd v Lui Andrew Stewart [2012] 4 SLR 308 ("Smile Inc").

In general, all restraint of trade clauses are prima facie void unless the clause does not constitute an unreasonable restraint of trade.

In determining whether a particular clause is reasonable, the courts would first assess whether the employer has a legitimate proprietary interest to protect. The mere protection of an employer from competition is not allowed.

If the courts decide that the employer has a legitimate proprietary interest to protect, the next step would be to determine whether the clause fulfils the twin test of reasonableness. The clause must be reasonable as between the parties, i.e. the employee and the employer concerned, and in the interest of public.
Man Financial
In Man Financial, the appellant was a brokerage company while the respondent was the appellant’s former managing director. The court was concerned with the following two clauses:

- a non-solicitation clause which prevented the respondent-employee from soliciting the appellant’s employees for a period of 7 months; and
- a non-competition clause which prevented the respondent-employee from participating in or rendering advice to the appellant’s competitors for 7 months.

In consideration, the appellant promised to pay the respondent-employee a “not inconsiderable” compensation if the latter did not breach the agreement.

With respect to the non-solicitation clause, the court found that the appellant had a legitimate proprietary interest in maintaining a stable and trained workforce. The clause was reasonable as between the parties for various reasons, including:

- the respondent-employee agreed to the inclusion of the clause as a gesture of goodwill and was the one who proposed the 7-month period; and
- the respondent-employee received compensation to which he was otherwise not legally entitled.

With respect to the non-competition clause, the court found that it was an unreasonable restraint of trade as there was no legitimate proprietary interest to be protected. The scope of the activities prohibited was also too wide to be reasonable.

Smile Inc
In Smile Inc, the appellant was a chain of dental clinics while the respondent was formerly employed by the appellant as a dental surgeon. The court was concerned with the following three clauses:

- a non-solicitation clause which prohibited the respondent from soliciting the appellant’s other employees;
a clause which prohibited the respondent from practicing within a 3km radius from any of the appellant’s clinics (the “Radial Clause”); and

a clause which prohibited the respondent from dealing with any of the appellant’s present and future customers (the “Non-Dealing Clause”).

The court found that there was a legitimate proprietary interest in the context of medical practitioners due to their special and intimate knowledge of the patients of the business. However, it found the three clauses unreasonable as they were too wide and did not provide for any fixed duration of time. Additionally, the Radial Clause was void for being anti-competitive and the Non-Dealing Clause was void for being too wide in its scope of activities prohibited.

**Restrain of Trade in the Sale of Business Context**

While the same general principles apply, the Court of Appeal in CLAAS Medical Centre Pte Ltd v Ng Boon Ching [2010] 2 SLR 386 (“CLAAS Medical”) held that restraint of trade clauses would be more liberally interpreted in the context of a sale of business. This was mainly due to the fact that the purchase price for the sale of the business had factored in certain goodwill. As such, the seller should not remove part of that goodwill by resuming his practice immediately after. Moreover, in this context of sale of a business, there was also more equal bargaining power between the seller and buyer in negotiations.

**Conclusion**

The Singapore position on restraint of trade can be summarised as follows:

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<tr>
<td><strong>General Principles</strong></td>
<td>All restraint of trade clauses are prima facie void unless they are not unreasonable.</td>
<td>First, there must be a legitimate proprietary interest to be protected. Second, the clause must be reasonable both as between the parties and in the interest of public.</td>
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<td><strong>Legitimate Interest</strong></td>
<td><strong>Restraint of Trade in the Employment Context: Man Financial</strong></td>
<td><strong>Restraint of Trade in the Sale of Business Context: CLAAS Medical</strong></td>
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<td>Employer’s maintenance of a stable and trained workforce</td>
<td>Buyer had paid for the seller’s goodwill as part of the sale of the business</td>
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<td><strong>Factors Affecting Reasonableness</strong></td>
<td>Geographical location, duration of restriction, scope of activities prohibited</td>
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<td><strong>Court’s Approach</strong></td>
<td>Strict: Unequal bargaining powers between employer and employee, and public policy where society should not be deprived of an individual’s labour, skill or talent by a contract into which he enters</td>
<td>Liberal: Buyer had paid for seller’s goodwill which seller should not subsequently undermine, and more equal bargaining power between seller and buyer</td>
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<td><strong>Severance</strong></td>
<td>Not an issue before the court</td>
<td>Application of the ‘blue pencil’ test, i.e. deleting the offending words from the clause in issue without altering the meaning of the provision and without rendering it senseless</td>
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